A DIGEST OF INDIAN LAW CASES:

CONTAINING

HIGH COURT REPORTS, 1862-1900,

AND

PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA 1836-1900,

WITH AN INDEX OF CASES.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

JOSEPH VERE WOODMAN,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND ADVOCATE OF THE HIGH COURT, CALCUTTA

IN SIX VOLUMES.

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[3 Moore's I. A, 435

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[2 B. L. R, P. C., 10
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[5 B L. R., 254, 254 note
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See Cases under Right of Suit—Sale in Execution of Decree.

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See Cases under Sale for Arrears of Revenue—Setting aside Sale.

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——— Agreement not to bid against one another at—

See Contract Act, s. 23—Illegal Contracts—Generally.
[I. L. R., 18 Bom., 342

——— Auctioneer—*Agent bidding "kutcha-pucca"—Usage of trade—Custom—Conditon of sale.*—An agent of the defendants made at an auction-sale a bid for certain goods: this bid was not at the time accepted by the auctioneers, but was referred to the owners of the goods for approval and sanction, the agent agreeing to such reference. The conditions of sale contained no clause stipulating for such procedure. Previous to any reply being received by the auctioneers from their principals, the principals of the agent bidding refused to acknowledge the bid of their agent. In a suit brought by the auctioneers to recover a loss on a re-sale of the goods, the plaintiffs set up a usage of trade, whereby it was alleged that the bidder at such a sale was not at liberty to withdraw his bid until a reasonable time had been allowed for the auctioneers to refer the bid to the owner of the goods. The only evidence on this point was that of an assistant to the firm of the plaintiffs, who stated "that such an arrangement had never been repudiated." *Held* that the condition of sale containing no clause to the effect of the usage claimed, and there being no sufficient evidence that the usage was so universal as to become part of the contract by operation of law, there was no contract between the parties, and therefore that no suit would lie. Mackenzie Lyall & Co. *v.* Chamroo Singh & Co. . . . . I. L. R, 16 Calc., 702

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1. ACT VIII OF 1835.

1. ——— Procedure —*Sale of under-tenure —Beng. Reg. VII of 1799.*—Sales of under-tenures under Act VIII of 1835 for arrears of rent were not

SALE FOR ARREARS OF RENT —*continued*

1 ACT VIII OF 1835—*continued*

required to be according to the procedure laid down in Regulation VII of 1793 but according to the procedure prescribed by s 2 of Act VIII of 1835 MONOSHEE *v* ABDOOL HOSSEIN 7 W R, 297

2 ———— Effect of sale—*Right of purchaser—Itmamee tenure* —When rights and interests in a talukh were sold for arrears of rent under Act VIII of 1835 the purchaser obtained no power to destroy the itmamee tenure SOOBULCHUNDER PAUL *v* ATTUR ALI 11 W R, 32

3 ———— *Right of purchaser—Incumbrances* —A sale of an under tenure under Act VIII of 1835 passed only the right title and interest of the judgment debtor and did not void the incumbrances created by the old tenant MANICK CHUNDER DOSS *v* DWARKANAUTH DOSS [2 Hay, 502

4 ———— *Right of purchaser Act XI of 1859 s 52—Semble* —The purchaser of a holding in a khas mehal sold under Act VIII of 1835 could claim the position or privileges accorded by ss 37 and 52 of Act XI of 1859 to purchasers of permanently settled estates or of estates sold in districts not permanently settled sold for arrears of revenue KYLASH CHUNDER SHAHA *v* SHURNOMOYEE DOSSEE 7 W R, 318

5 ———— *Incumbrances —Howladari tenure* —The plaintiff held certain lands in talukh Q under a howladari pottah. Q was sold for arrears of rent under Act VIII of 1835 and purchased by the defendant After purchase, the defendant dispossessed the plaintiff from his lands on the [illegible]

chaser of a tenure under Act VIII of 1835 did not necessarily acquire it free from all incumbrances Case remanded for trial of the genuineness of the plaintiff s pottah JASIMUDDIN *v* MANSUR ALI [6 B L R, Ap, 149 15 W R 11

Contra DWARKANATH DOSS *v* MANICK CHUNDER DOSS 3 W R, 197

RAMJEEBUN CHOWDRY *v* PEARY LALL MUNDUL [4 W R, Act X, 30

6 ———— *Right of purchaser—Attachment—Tender of arrears* —In a suit to set aside a sale in execution of a decree for arrears of rent due up to Aghran 12 2 the plaintiff who

but as a sezawal was legally in possession The plaintiff never tendered the arrears for which the sale was made Under Act VIII of 1835 no separate attachment of a mehal or notification of sale in the mofussil is necessary in order to render the sale valid In this case, not the rights and interests of the defaulter but the tenure itself, passed for the arrears due upon it Attachment by the appointment of a sezawal is no bar to a sale for arrears due before such attachment FORBES *v* PROTAP SINGH DOOGUR [7 W R, 409

7 ———— *Beng Reg VII of 1799—Tuppa right Extinguishment of—Semble* —A tuppa right is annihilated by a sale held under Act VIII of 1835 and cl 7 s 15 Regulation VII of 1799 ZEENUT BEBEE *v* RAHATOONISSA [7 W R, 243

2 DEFAULTERS

8 ———— Disabilities of defaulters—*Purchase—Beng Reg VIII of 1819—Sale of patni* —A defaulter cannot under Reg VIII of 1819, purchase a patni sold on account of his default to pay the patni rent either in his own name or in that of any other person MAHOMED NASSEER *v* KISHEN MOHUN GOYEE W R, F B, 92

9 ———— *Purchase—Sale of patni* —Not merely recorded shareholders but all actual defaulters (such as joint patnidars) are prohibited from being purchasers of patni GOUREE KOMUL BHUTTACHARJEE *v* RAJ KISHEN NATH [5 W R, 108

10. ———— *Purchase—Right to sue—Suit by another defaulting co sharer to set aside sale* —A suit by a sharer to set aside a sale having been dismissed on the ground that plaintiff being a defaulter the suit would not lie plaintiff brought a second suit to claim possession of his share of the dar patni talukh on the ground that the sale must be inoperative inasmuch as the purchaser a co sharer was also a defaulter *Held* that until the sale was set aside plaintiff was not in a position to claim possession of his share. GOUREE KOMUL BHUTTACHARJEE *v* RAJ KRISTO NATH 14 W R, 369

11. ———— *Purchase—Suit by other defaulters to set aside sale—Joint owners—Dar-patnidar—Constructive trust* —Of three joint owners of a dar patni two held a 4 annas share and the third an 8 annas share Default having been made by all three in the payment of the rent the patnidar brought a suit and obtained a decree for [illegible]

[illegible] shareholder declined paying his share and when the sale took place he became the purchaser of the dar-[illegible]

Held on second appeal that, the sale having taken place as much through the default of the plaintiffs as through the default of the defendant the former had no equity against the latter and that therefore the

SALE FOR ARREARS OF RENT —*continued.*

2. DEFAULTERS—*concluded.*

suit should be dismissed. RAM LOLL MOOKERJEE *v.* DEBENDER NATH CHATTERJEE [I. L. R., 8 Calc., 8

S. C. RAM LALL MOOKERJEE *v.* JODUNATH CHATTERJEE . . . . . 9 C. L. R., 337

12. ———— **Defaulter for period later than that causing the sale**—*Suit for damages by dar-patnidar.*—When a patni is sold for default on the part of the patnidar in paying his rents, a dar-patnidar who has paid his rent to the patnidar for the period to which the default relates may sue for damages, although himself a defaulter for a later period. MADHUB ANUND MOITRO *v.* JOY KOOMAREE BIBEE . . . . . 5 W. R., 201

3. UNDER-TENURES, SALE OF.

13. ———— **Beng. Act VIII of 1865**—*Application of Act—Chota Nagpore.*—Bengal Act VIII of 1865 applied to the district of Lohardugga in Chota Nagpore. GOBIND RAM *v.* BHUPAL SINGH [10 C. L. R., 76

14. ———————— **s. 30**—*"Proceeding"—Sale.*—A sale under Bengal Act VIII of 1865 was a "proceeding" within the meaning of s. 30 of that Act. DWARKANATH SEIN *v.* CHUNDER MOHUN MITTER . . . . . 12 W. R., 326

15. ———— **Act X of 1859, s. 105**—*Sale of transferable tenure—Act X of 1859, s. 151.*—The plaintiff sued to bring a transferable occupancy tenure to sale in satisfaction of a decree for arrears of rent, by cancelment of an order passed under Act X of 1859 relating to the execution of the decree. *Held* that, in so far as the suit sought to set aside the order, it was barred by the provisions of s. 151 of Act X of 1859, and was not admissible by reason of the repeal of the Act: in so far as, irrespectively of the order, the suit sought to recover the amount of the decree by the sale of the holding on which the arrear accrued, at the time it was instituted s. 105 of the Act had ceased to be law in these provinces, and could not be cited in support of the claim. RAM KHILOWAN RAM *v.* FOX . . . . . 7 N. W., 239

16. ———————— *Purchase by zamindar at sale in execution of decree of Civil Court.*—A zamindar who had obtained a decree against a registered tenant for arrears of rent was fully justified in proceeding to sale under s. 105 of Act X of 1859, notwithstanding the tenure was purchased subsequently to the date of the above decree at a sale in execution of a decree of the Civil Court. SUFUROONISSA *v.* SAREE DHOOPEE . . . 8 W. R., 384

17. ———————— Under s. 105, Act X of 1859, an under-tenure might be sold in execution of a decree, provided there was an arrear of rent adjudged. SUTTYESCHUNDER ROY *v.* MODHOOSOODUN PAUL CHOWDHRY . W. R., 1864, Act X, 91

18. ———————— *Procedure by proprietor of under-tenure—Act X of 1859, s. 106.*—Under s. 105, Act X of 1859, an under-tenure was liable to sale in execution of a decree for arrears of rent for eleven years. Any party wishing to stay the sale, on the ground of his being the proprietor of the under-tenure, had to comply with the provisions of s. 106. DOORGA PERSAD BOSE *v.* SREEKISTO MOONSHEE . . . W. R., 1864, Act X, 48

19. ———— **Beng. Act VIII of 1869, ss. 59, 64**—*Procedure.*—Where an under-tenure is sold under the provisions of Bengal Act VIII of 1869 in execution of a decree obtained by the zamindar for rent due to him as the separate proprietor, after batwara of a share of the talukh in which the tenure is situated, the sale is properly conducted, not under s. 64, but under s. 59 of the above law. SURUT SOONDUREE DEBIA *v.* SUMEEROODEEN TALUKHDAR [22 W. R., 530

20. ———— **Effect of sale**—*Right, title, and interest of debtor—Act X of 1859, s. 105.*—In a sale under s. 105, Act X of 1859, only the judgment-debtor's property can pass. MEAH JAN MUNSHI *v.* KURRUNA MAYI DEBI . . . . 8 B. L. R., 1

21. ———————— *"Tenure," Meaning of—Non-registration of names—Act X of 1859, s. 105.*—By the word "tenure" as used in s. 105, Act X of 1859, is meant not the right or interest of any person in the land, but the holding or the interest which has been created by the lease, and it is the latter which is sold on a sale under s. 105. Therefore where *A*, at a sale in execution of a decree for debt, bought the right, title, and interest of the holder of a transferable under-tenure, and previous to the confirmation of such sale the zamindar sued the tenant for arrears of rent and obtained a decree, under which he sold the tenure to persons who conveyed it to *B*, and *A*, under the circumstances, neither registered the transfer to him nor made any deposit of rent as allowed by s. 6, Bengal Act VIII of 1865,—*Held* that he was not entitled to recover possession from *B*. SHAMCHAND KUNDU *v.* BROJONATH PAL CHOWDHRY [12 B. L. R., F. B., 484 : 21 W. R., 94

GIRISH CHUNDER MITTER *v.* JHAKU [12 B. L. R., 488 note : 17 W. R., 352

ANUND LOLL MOOKERJEE *v.* KALIKA PERSAD MISSER . 12 B. L. R., 489 note : 20 W. R., 59

RUGHOOBUR THAKOOR *v.* SYEFOOLLAH KHAN [23 W. R., 289

BANEE MADHUB BUKSHEE *v.* RADHA MADHUB MOZOOMDAR . . . . 22 W. R., 196

22. ———————— *Non-registration of tenants' names—Right of person in permissive possession of tenure.*—A sale in execution of a decree for arrears of rent (at an enhanced rate) of a subordinate talukh, which has been obtained against a party who is in possession of the talukh by permission of the owners, but who has no other right or title to it, will not bind those owners, even though their names be not recorded as tenants in the books of the zamindar. *Sham Chand Kundu v. Brojo Nath Pal*

SALE FOR ARREARS OF RENT —*continued*

3 UNDER-TENURES, SALE OF—*continued.*

Chowdhry, *12 B L R*, *484* distinguished REDOY KISSEN DUTT *v* RAM COOMAR SEN [3 C L. R, 231

23. ——— *Non registration of purchase of under-tenure in the landlord's serishta* —In a case governed by Act X of 1859, it was *held* that a person, who had purchased a transferable jote but who did not get his name registered in the landlord's serishta had no *locus standi* against a subsequent auction purchaser of the jote in execution of a decree obtained against the recorded

24. ——— *What passes at sale of under-tenure—Growing crops—Beng Act VII of 1869, s 66* —At a sale of an under tenure for arrears of rent under s 66 of Bengal Act VIII of 1869, the growing crop standing on the land passes to the purchaser at the auction-sale, except when it has been specially excepted by the notification of sale, or a custom to the contrary has been proved. AFATOOLLA SIRDAR *v* DWARKA NATH MOITRY [I L.R, 4 Calc, 814 4 C L R., 95

25. ——— *What passes at sale of under-tenure—Certificate of sale* —*B B* held 1 anna of a 10 annas in a jumma which had been purchased by *B L H* and had paid rent to the kutkinadar on such 1 anna share, and had his name registered as owner of such 1 anna share in the sherista of the kutkinadar The kutkinadar having for ob put hat, as the sale certificate related only to the share of *B L H*, *B B*'s 1 anna share did not pass under such sale BHUGEERUTH BERAH *v* MONEERAM BANERJEE I L R., 4 Calc, 855

26 ——— *What passes at sale of under-tenure—Beng Act VIII of 1869, ss 59, 60*—

what passed by the sale was not an under tenure, but

27 ——— *Sale in execution of decree under Civil Procedure Code 1859—Beng Act VIII of 1869, ss 59, 60 66—Right of purchaser* —In execution proceedings under Act VIII of 1869, whether the property attached is an under tenure or an ordinary leasehold interest, only the

SALE FOR ARREARS OF RENT —*continued*

3 UNDER TENURES, SALE OF—*continued*

right, title, and interest of a judgment debtor can be

CHAND SAHOO *v* LALLA BISHESHUR DYAL [L. R, 6 I A, 47 · 3 C. L R, 561

28 ——— *Beng. Act VIII of 1869 ss 59, 60*—

and that this tenure did not pass to the auction purchaser with any incumbrances GRISH CHUNDER GHOSE *v* KALEE TARA . 25 W R., 395

29 ——— *Right of mortgagee—Right to notice of sale—Adjudication of title, Suit for* —The right title and interest of *A* in a certain under tenure was sold in execution of a

and thereupon having foreclosed the mortgage instituted a suit for possession against *A* and *B* and obtained a decree for possession After this decree, but before *C* got actual possession *B* caused the under tenure to be sold in execution of his other decree against *A* and again became himself the purchaser *C*, having shortly afterwards obtained possession under took possess purchase s 269, Act VIII of 1869, in which he was successful, and consequently regained possession In a suit brought by *B* to set aside those proceed

I. L. R, 4 Calc, 488

S C WATSON *v*. GONESH CHUNDER SAHOO [3 C L.R, 240

30 ——— Procedure—*Setting aside sale—Material irregularities—Civil Procedure Code (Act X of 1877), Ch XIX, ss. 311 647* —The procedure to be followed upon the sale of an under tenure is now that prescribed by the Civil Procedure Code. S 311 does not apply only to sales made under Ch XIX of the Code and the sale of an under tenure may be set aside upon any of the grounds mentioned

SALE FOR ARREARS OF RENT —*continued.*

3. UNDER-TENURES, SALE OF—*concluded.*

in that section. AZIZOONESSA KHATOON *v.* GORA CHAND DASS . . . **I. L. R., 7 Calc., 163**

S. C. AZIZOONNESSA KHATOON *v.* KAILY CHURN SEN . . . . . . **8 C. L. R., 498**

4. PORTION OF UNDER-TENURE, SALE OF.

31. ———— **Judgment-debtor in receipt of whole rent**—*Beng. Act VIII of 1869, ss. 61, 64.*—It is only where the judgment-debtor is in receipt of the entire 16 annas share of the rent that in execution of a decree for rent the under-tenure can be sold. DWARKA NATH CHAKRAVUTI *v.* SUVRIDRA NATH CHOWDHURI . . . **8 C.L. R., 407**

32 ———— **Sale under decree obtained by sharer in undivided estate.**—If a decree is given in favour of a sharer in a joint undivided estate for his share of the rent of an under-tenure situate in such estate, he is not allowed by law to put up for sale a portion of the under-tenure. GOBIND CHUNDER ROY CHOWDHRY *v.* RAM CHUNDER CHOWDHRY **[22 W. R., 421**

33. ———— *Act X of 1859, s. 108—Effect of sale.*—Where a sharer in an undivided talukh, after obtaining a decree for money due to him on account of his share of the rent, brings to sale a portion of the tenure corresponding with the share of the rent for which he obtained a decree, the sale has no further effect than any other sale in which the rights of the judgment-debtor are sold. NUND LALL ROY *v.* GOOROO CHURN BOSE **[15 W. R., 6**

PITAMBUREE CHOWDHARAIN *v.* NOBIN KRISTO MOOKERJEE . . . . . **18 W. R., 205**

34. ———— **Act X of 1859, s. 108**—*Beng. Act VIII of 1865, s. 4—Sale of under-tenure—Execution of decree for rent.*—A suit by a sharer in a joint undivided estate for money due to him on account of his share of the rent of an under-tenure situate in such undivided estate fell within the provisions of s. 108, Act X of 1859. Where the owner of an undivided estate lets his share to a tenant by giving a pottah and taking a kabuliat, a suit for the rent of such undivided share, treated as a separate and distinct under-tenure, came under the provisions of s. 4, Bengal Act VIII of 1865. DWARKANATH CHUCKERBUTTY *v.* DHUN MONEE CHOWDRAIN **[15 W. R., 524**

35.———— *Right of purchaser on sale of portion of tenure.*—Where a suit was for rent, and the balances due under the decree were on account of a 7 annas rukkum of a tenure, and the sale-certificate passed the right and interest of the defaulting under-tenant, it was held that Act X of 1859, s. 108, was applicable to the case, and that such right and interest only, and not the whole tenure, became vested in the auction-purchaser. AKHIL CHUNDER MOOKERJEE *v.* CHUNDER COOMAR MITTER . . . . . **22 W. R., 414**

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*continued.*

36. ———— **Beng. Act VIII of 1869, s. 64** —*Right of purchaser—Effect of sale.*—The Full Bench decision in *Sham Chand Kundu* v. *Brojonath Pal Chowdhry, 12 B. L. R., 484: 21 W. R., 94,* by which the right of a purchaser in execution of a rent-decree prevails over that of an earlier purchaser, has no application to the case of a sale under Bengal Act VIII of 1869, s. 64, which provides for the sale, not of the tenure, but of the right, title, and interest of the judgment-debtors. LUCHMUN RAMONOOJ DOSS *v.* RAM HUREE ROY . . . **22 W. R., 67**

37. ———— *Landlord and tenant—Sale of a portion of a tenure—Beng. Act VIII of 1869, ss. 59, 60—Co-sharers—Parties.*—A portion of a tenure cannot be the subject of a sale under s. 64, Bengal Act VIII of 1869, so as to give the purchaser the same privilege as he would acquire by the purchase of an entire tenure under ss. 59 and 60. A landlord who was in receipt of a half share of the rent of a certain tenure caused that share of the tenure to be sold in execution of a decree for arrears of rent. After such sale *A*, the purchaser, took possession. Subsequently the tenant executed a mortgage, and a decree being obtained by the mortgagee the whole tenure was brought to sale in execution thereof and purchased by the mortgagee, who proceeded to oust *A*. In a suit by *A* to recover possession of his half share of the tenure on the footing of his purchase. *Held* that he could not make out a title to the half tenure with the privilege attaching to the purchase of an entire tenure under ss. 59 and 60 of Bengal Act VIII of 1869; and that, as it appeared that the mortgagor, whose rights and interests only were thus sold, was only one of several co-sharers, in the absence of the co-sharers, who were not parties to the suit, *A* was not entitled to the relief he sought. REILY *v.* HUR CHUNDER GHOSE **[I. L. R., 9 Calc., 722: 12 C. L. R., 398**

See SHAMCHAND KUNDU *v.* BROJONATH PAL CHOWDHRY. . . . **12 B. L. R., 484**

38. ———— *Right, title, and interest of registered shareholder in tenure—Effect on joint shareholders.*—Where a judgment-debtor was alone registered in the serishta of the zamindar as owner of a tenure, but it appeared that his two brothers who were joint in estate with him were entitled to an equal share with him in the tenure, but that the judgment-debtor was the manager; and when it appeared that the zamindar, being only entitled to a share in the zamindari, had obtained a decree against the judgment-debtor alone for arrears of rent, and in execution thereof proceeded to sell his right, title, and interest under s. 64 of the Rent Act,—*Held* that, as the judgment-debtor represented his brothers, and as they were equally liable to pay the amount of the decree upon the principle set out above, the latter were not entitled to recover their share of the tenure which the auction-purchaser had obtained possession of in execution of the decree against the judgment-debtor. *Doolar Chand Sahoo* v. *Lalla*

SALE FOR ARREARS OF RENT —*continued.*

4. PORTION OF UNDER-TENURE, SALE OF —*continued.*

Chabeel Chand, L. R., 6 I. A., 47, and *Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233,* commented on. JEO LALL SINGH *v.* GUNGA PERSHAD . . . I. L. R., 10 Calc., 996

39. ——————— *Sale of right, title, and interest of a registered tenant—Effect of sale of a tenure in execution of a decree for arrears*

defendant No 1, who was a joint owner of the talukh with the plaintiffs, in execution thereof fraudulently caused the disputed property to be sold, and defen-

and interest, not only of the registered tenant, but also of the unregistered co-owners whom he represented. *Jeo Lall Singh* v. *Gunga Pershad, I. L. R., 10 Calc., 996,* followed. NITAYI BEHARI SAHA PARAMANICK *v.* HARI GOVINDA SAHA

[I. L. R., 26 Calc., 677

40. ——————— *Sale of a jumma in execution of a decree for rent obtained against one of the heirs, of the last recorded tenant, from whom the landlord chose to accept rent separately and who was not recorded in the landlord's serishta—Effect of such a sale.*—An heir of an occupancy raiyat can claim recognition by the landlord on the death of his ancestor who was the recorded tenant. The plaintiffs sued to recover possession of their share of certain rent-paying lands on the allegation that they were entitled to a one-third share of these lands by inheritance from the last recorded tenant, and another one-third share by purchase from one of his heirs; that the defendants Nos. 2 and 3 were entitled to the remaining one-third share; that for some years they and the said defendants have been paying rent to the landlord and obtaining separate rent receipts; that the defendants Nos. 2

absolute owner of the 12 annas ganti, and had acquired the right, title, and interest of the last registered tenant in the 4 annas share. The result was to place him in the position of holding the 16 annas gantidari right as against the under tenants, who were bound to pay rent to him as *de facto* gantidar JOGENDRO CHUNDER GHOSE *v.* SHONA KALEE

[24 W. R., 313

42. ——————— *Sale of immoveable property—Beng. Act VIII of 1869, s 65.*—Where one co-sharer obtains a decree for money due to him on account of his share of the rent of an

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insufficient to satisfy the decree, that the judgment-creditor can proceed under s. 64 or 65, Bengal Act VIII of 1869, to seize and sell the immoveable property of his debtor. SARODA PROSAD GANGOOLY *v.* TARUCK CHUNDER BHUTTACHARJEE [2 C. L. R., 325

43. ———————— *Landlord and tenant—Sale of portion of under-tenure—Suit for arrears of rent.*—There is nothing in s. 64, Bengal Act VIII of 1869, which necessarily leads to the conclusion that under that section a share of an under-tenure cannot be sold so as to render the sale binding upon the judgment-debtor; and there is no substantial difference between the sale of a portion of an under-tenure under that section and under the Civil Procedure Code. Where therefore a plaintiff, who was the owner of a share in a zamindari, had obtained a decree against *X*, who held a talukh in such zamindari, for arrears of rent due in respect of such share, and in execution of such decree brought a share of such talukh to sale, corresponding with his share in the zamindari, and himself became the purchaser; and where such plaintiff subsequently instituted a suit against *X*, who was also the owner of a howla and nim-howla under the said talukh, for arrears of rent due in respect of the share of the talukh so purchased by him; and where it appeared that the sale at which the plaintiff became the purchaser was afterwards confirmed; and that he had obtained a sale certificate,—*Held* that such suit was not liable to be dismissed merely on the ground that the plaintiff had brought a share of an under-tenure to sale in execution of a decree for arrears of rent under s. 64 of Bengal Act VIII of 1869, and had thereby acquired nothing by such purchase, there being nothing in that section to support such a conclusion. *Gobind Chunder Roy Chowdhry* v. *Ram Chunder Chowdhry, 22 W. R., 421,* and *Reily* v. *Hur Chunder Ghose, I. L. R., 9 Calc., 792,* discussed and explained. ASHANULLA KHAN BAHADUR *v.* RAJENDRA CHANDRA RAI . . . . . I. L. R., 12 Calc., 464

44. ———————— **Act VIII of 1869, ss. 26, 59**—*Suit for rent—Landlord and tenant—Effect of sale in execution of a decree for rent.*—Where two persons, *B* and *I*, were registered tenants, and on *B*'s death no one was registered in his place, and a suit for arrears of rent was brought against the widow and the executors of the sole surviving registered tenant,—*Held* in view of s. 26 of Act VIII of 1869 (B.C.) that the zamindar was not bound to look for his rent beyond the representative of the surviving registered tenant, and that the entire tenure passed by the sale in execution of a decree for arrears of rent obtained against the representative of the surviving registered tenant. Where the sale proclamation distinctly set out that the sale would be held according to the provisions of s. 59 of Act VIII of 1869, and the property advertised was the tenure and the property sold was the tenure,—*Held* that the mere insertion of a statement that the sale was of the rights and interests of the judgment-debtor would not have the effect of limiting the sale to such rights and interests and not extending to the tenure itself. MAHOMED SIRKAR *v.* GIRISH CHUNDER CHOWDHURI . . . 2 C. W. N., 251

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5. EFFECT OF SALE.

45. ———————— **Dissolution of relation of landlord and tenant**—*Patni tenure.*—The sale of a patni dissolves the relationship of landlord and tenant between the zamindar and the patnidar. BROJONATH SINGH ROY *v.* BHUGOBUTTY DASSEE [1 W. R., 133

46. ———————— **Unregistered tenant.**—A zamindar has a perfect right to bring a tenure to sale for arrears of rent without regard to the rights of the new tenant while he is yet unregistered. NOBEEN KISHEN MOOKERJEE *v.* SHIB PERSHAD PATTUCK [9 W. R., 161

Upholding on review decision in . 8 W. R., 96

47. ———————— **Registered tenant affected by sale.**—A zamindar need not ordinarily look beyond the register for sale of a tenure of a registered defaulter. FORBES *v.* PROTAP SINGH DOOGUR [7 W. R., 409

48. ———————— **Liability of tenant for rent after sale**—*Non-registration of transfer.*—Where a patni tenure is sold under a decree against the tenant, he is not liable for any rent which may accrue afterwards, notwithstanding the transfer may not be registered. GOPEEKISTO GOSSAMEE *v.* RAM COMUL MISTRY . . . . . Marsh., 212

S. C. RAM COMUL MISTRY *v.* GOPEEKISTO GOSSAMEE . . . . . . 1 Hay, 563

See contra, HOROMOHUN MOOKERJEE *v.* RAM COOMAR MITTER . . . 1 W. R., 225

49. ———————— **Right of inamdars in respect of debts for arrears of rent.**—The paramount rights of Government in respect of debts due to the Crown are not transferred to alienees (such as inamdars) of Government revenue. If an inamdar fails to recover his rents by any of the special processes provided in the regulations, and is obliged to go into the Civil Court and obtain a decree for arrears, the sale of the land in execution of such a decree has the same effect (and no more) as a sale of land in execution of a decree for any other debt. BALAJI NARAYAN KOLATKAR *v.* RAMCHANDRA GANESH KELKAR . . . . . . 11 Bom., 37

6. INCUMBRANCES.

50. ———————— **Subordinate tenures, Effect of sale on**—*Beng. Reg. VIII of 1819—Sale of patni talukh.*—On the sale of a talukh under the provisions of Regulation VIII of 1819, all subordinate tenures, such as ousut talukhs, howlas, nim-howlas, did not necessarily lapse: it depended very much upon the terms of the pottah or grant under

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which the original talukh was created DWARKANATH DOSS BISWAS v. MANICK CHUNDER DOSS [9 W. R., 200

51. ———— Tenures created by defaulter —*Beng. Reg VIII of 1819—Sale of patni tenure* —A sale under Regulation VIII of 1819 did not *ipso facto* annul all tenures created by the defaulting patnidar, but the purchaser, if he thought proper, could avoid them MADHUSUDUN KUNDU v. RAMDHAN GANGULI [3 B. L. R., A. C., 431: 12 W. R., 383

52 ———— Tenures created by patnidar—*Patni tenure—Act X of 1859, s 105 —Beng Reg VIII of 1819*—The provisions of Regulation VIII of 1819 with respect to the sale of under-tenures for arrears of rent being applicable to sales under decrees for rent made under s 105, Act X of 1859,—*Held* that, where a sale had been effected of a "patni talukh" under that section, it must be presumed, in the absence of evidence to the contrary, that the tenure was one transferable by sale, and upon the creation of which it was stipulated

Regulation VIII of 1819, and the effect of the sale was to annul all incumbrances created by the patnidar BRINDABUN CHUNDER SIRCAR CHOWDHRY v. BRINDABUN CHUNDER DEY CHOWDHRY [13 B L. R., 408: 21 W. R., 324 L. R, 1 I. A., 178

S C in High Court, BRINDABUN CHUNDER CHOWDHRY v. BRINDABUN CHUNDER SIRCAR CHOWDHRY [8 W. R., 507

53. ———— Decree as to liability to enhancement—*Beng Reg. VIII of 1819—Right of purchaser—Suit for enhancement of rent—Patni tenure* —The purchaser of a patni talukh at a sale for arrears of rent under Regulation VIII of 1819 sued for a kabuliat at an enhanced rent The former patnidar had brought a similar suit, and the Court had declared that the rent was not liable to enhancement *Held* that the purchaser was bound by that decree TARAPRASAD MITTRA v RAM NRISING MITTRA . 6 B. L. R, Ap, 5: 14 W. R, 283

54. ———— Purchase by grantor of patni tenure—*Beng Reg VIII of 1819, s. 11, cls 1 and 3—Rate of rent—Patni tenure* —The grantor of a patni tenure who subsequently purchases the lands granted by him in patni at the sale of the patni tenure does not revert *ipso facto* to the possession he formerly held as proprietor, and is not entitled to recover rent from the tenants at the rate he was

55. ———— Right to annul tenures—*Right of lessee claiming under purchaser—Tenures not annulled by purchaser* —Where an auction purchaser did not avail himself of the power vested in him by law to avoid and annul a tenure created by his predecessor,—*Held* that it was not open to any person subsequently holding his estates, and still less to a mere lessee claiming under him, to avoid the tenure. TARA CHAND DUTT v WAKEENOONISSA BIBEE . . . 7 W. R, 91

56. ———— Power to make incumbrances—*Patni lease, Construction of—Beng Reg VIII of 1819.*—A patni lease containing words to the effect that the patnidar could give no dar patni

acquires any of the rights of the patnidar, he is bound by the acts of the latter as regards the grant of leases. MOHADEB MUNDUL v. COWELL 15 W. R., 445

Upheld on review. COWELL v MOHADEB MUNDUL [17 W. R., 182

See MONOMOTHONATH DEY v. GLASCOTT [20 W. R., 275

SHAM CHAND MITTER v JUGGUT CHUNDER SIRCAR [22 W. R., 50

Upheld on review . . 22 W. R., 541

57. ———— Right of ejectment—*Right of purchaser of patni tenure—Waiver by acceptance of rent.*—The receipt of rent for fifteen years by the purchaser of a patni talukh sold for arrears of rent under Regulation VIII of 1819 was held to be a waiver on his part of his right to evict the tenant under cl 2, s 11 of that Regulation WOOMANATH ROY CHOWDHRY v ROGHOONATH MITTER [5 W. R., Act X, 63

58 ———— Bengal Rent Act, 1869, s 66 (Beng. Act VIII of 1865, s. 16)—*Khodkasht raiyats* —The object of s 16, Bengal Act VIII of 1865, was to protect, not merely any one class of tenants, but the leaseholder of the particular land ... used ... itors"

... 206

59 ———— *Purchaser of rights of holder of fractional share.*—S 16 of Bengal Act VIII of 1865 did not apply to the purchaser of the rights and interests of the holder of a fractional share in an under tenure. HARASUNDARI DASI v. KISTOMANI CHOWDHRAIN [5 B L.R., Ap, 37: 13 W. R., 257

60. ———— *Right of purchaser to eject tenants.*—Where the rights and interests of a judgment-debtor were sold in execution under Bengal Act VIII of 1865, the tenure itself did

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6. INCUMBRANCES—*continued.*

not pass, much less did it pass free from all incumbrances; and the purchaser was not entitled to eject tenants who had been occupying and cultivating the land for more than twelve years. RAJ KISHEN MOOKERJEE v. DUSRUTH SOOTRODHUR [15 W. R., 234

61. ———— *Under-tenure. Sale of—Act X of 1859, s. 105.*—Under-tenures sold for arrears of rent under s. 105 of Act X of 1859, other than tenures upon which the right of selling for arrears of rent had been especially reserved by stipulation in the engagements interchanged on the creation of the tenures, did not pass free from incumbrances. *Semble*—It was to get rid of this that s. 16 of Bengal Act VIII of 1865 was enacted. SHAHABOODDEEN v. FUTTEH ALI . B. L. R., Sup. Vol., 646 [2 Ind. Jur., N. S., 135 : 7 W. R., 260

MOHIMA CHUNDER DEY v. GOOROO DOSS SEN [7 W. R., 285

INDUR CHUNDRA DOOGUR v. RUTTUN KOOMAREE BIBEE . . . . . . 7 W. R., 376

The above Full Bench decision did not apply where the tenure itself was not sold. DOORGA SOONDUREE DEBIA v. DINOBUNDHOO KYBURTO DOSS [8 W. R., 475

62. ———— *Sale of sub-tenure—Beng. Reg. VIII of 1831.*—Where a sub-tenure had been granted, but no power was reserved to the grantor in the sanad to sell the tenure free from incumbrances in case of default in payment of rent,—*Held* that, in a sale for arrears of rent under Regulation VIII of 1831, the purchaser did not take free from incumbrances created by the grantee. The decision in *Shahaboodeen* v. *Futteh Ali, B. L. R., Sup. Vol.*, 646, affirmed. FORBES v. LUTCHMEPUT SINGH [10 B. L. R., 139 : 17 W. R., 197 14 Moore's I. A., 330

MOHESH CHUNDER BANERJEE v. CHUNDER MONEE DEBI . 10 B. L. R., 150 note : 15 W. R., 237

63. ———— *Beng. Act VIII of 1865.*—An auction-purchaser under Act VIII of 1865 was not at liberty, without notice of his intention to cancel a pre-existing under-tenure, or other act on his part, to avoid any incumbrance. GOBIND CHUNDER BOSE v. ALIMOODDEEN 11 W. R., 160

64. ———— *Survival of incumbrances.* The sale of a tenure under s. 16, Bengal Act VIII of 1865, did not *ipso facto* annul all incumbrances, but certain incumbrances were recognized by this section to survive such sale. UMASUNDARI DASI v. BIRBUL MANDAL [3 B. L. R., A. C., 183

S. C. WOOMA SOONDUREE DOSSIA v. BEERBUL MUNDUL . . . . . 11 W. R., 563

65. ———— *Voidable incumbrances.*—Under Bengal Act VIII of 1865, s. 16, under-tenures became void *ipso facto* by the sale and were not merely voidable at the option of the purchaser. UNNODA CHURN DASS BISWAS v. MOTHURA NATH DASS BISWAS [I. L. R., 4 Calc., 860 : 4 C. L. R., 6

66. ———— *Suit to set aside incumbrances.*—The right which an auction-purchaser has under the Rent Law, s. 66, to do away with under-tenures cannot be executed without a suit first having been instituted, the mere fact of purchase being insufficient to set aside incumbrances. RAJ BULLUBH MITTER v. SREERAM SIRCAR [25 W. R., 109

67. ———— *Patni tenure—Dar-patni tenure—Under-tenure—Incumbrance—Beng. Act VIII of 1869, ss. 59, 60.*—The sale of a patni tenure for its own arrears under ss. 59 and 60, Bengal Act VIII of 1869, does not *per se* avoid the dar patni tenures, but only renders them voidable at the option of the purchaser. An under-tenure is an incumbrance within the meaning of s. 66, Bengal Act VIII of 1869. TITU BIBI v. MOHESH CHUNDER BAGCHI . . . I. L. R., 9 Calc., 683

S. C. TITU BIBI v. IBRAHIM MOLLAH [12 C. L. R., 304

68. ———— *Brick-built house.*—A brick-built house was not an "incumbrance," or a tenure within the meaning of that word in s. 16 of Bengal Act VIII of 1865 which a purchaser at a sale for arrears of rent could remove. SHIBDAS BANDAPADHYA v. BAMANDAS MUKHOPADHYA [8 B. L. R., 237 : 15 W. R., 360

69. ———— *Mortgage by defaulting tenant—Act X of 1859, s. 105.*—A mortgage created by a defaulting under-tenant, on account of a debt contracted by him, could not continue to the prejudice of the auction-purchasers of the tenure sold for arrears of rent under s 105, Act X of 1859. KALEE KANT CHOWDHRY v ROMONEE KANT BHUTTACHARJEE . . . 3 W. R., 217

70. ———— *Title acquired—Adverse possession.*—If the holder of an under-tenure allowed his tenant to occupy the land rent-free for more than twelve years, the interest thus created in the latter was an incumbrance upon the under-tenure as much within the reason of Bengal Act VIII of 1865, s. 16, as if the holder had made a rent-free grant or given a nominal lease. MAHOMED ASKUR v. MAHOMED WASUCK . 22 W. R., 413

71. ———— *Right of occupancy under Act X of 1859, s. 6—Right of purchaser—Incumbrance.*—A purchaser of a tenure sold under Act VIII of 1865 for arrears of rent could not, under s. 16, eject a raiyat who had acquired a right of occupancy under s. 6, Act X of 1859, under the former tenant. NILMADHAB KARMOKAR v. SHIBU PAL [5 B. L. R., Ap., 18 : 13 W. R., 410

PUREDAG SINGH v. PURTAB NARAYAN SINGH [5 B. L. R., Ap., 20 : 11 W. R., 253

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BHOLANATH GHOSSAL v KEDARNATH BANERJEE [19 W. R., 106

EMAM ALI MESTORY v ATOR ALI KHAN [22 W. R., 133

72 ——— *Intermediate holding—Howla tenure* —An auction purchaser at a sale held under Bengal Act VIII of 1865 had a right to get rid of an intermediate holding such as a howla so far as to substitute himself for the howladar in respect of the collection of the raiyats' rents MOHIOODDEEN MAHOMED v RAM KISHORE KOONDOO 22 W R., 311

73 ——— *Rights of a purchaser at an auction sale held under Beng. Act VIII of 1865 when in collusion with the former proprietor* —A proprietor of a talukh which was about to be sold for arrears of rent, entered into an arrangement with the plaintiff whereby, in consideration of a share in the purchase, he agreed to use his influence to urge on the sale, and to secure the purchase to the plaintiff Under this arrangement, the plaintiff became the purchaser of the talukh, and the former ...

GHOSE v HARONATH DUTT CHOWDHRY [9 B L R, 220 ; 18 W. R., 240

74. ——— *Shikmi tenure* — Where a shikmi tenure was sold under Bengal Act VIII of 1865 and the shikmidar was found to be the ...

75. ——— *Shikmi tenure.*— At a sale held under Bengal Act VIII of 1865 the defendant purchased a shikmi tenure, and obtained possession thereof Subsequently he ousted the ...

dispossessed *Held* that under s 16 Bengal Act VIII of 1865 the incumbrances created by the former holder were voidable by the auction purchaser and ...

13 B. L R, Ap, 97 ; 12 W. R, 32

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6 INCUMBRANCES—*continued*

See SRINATH CHUCKERBUTTY v SRIMANTO LASHKAR [8 B L R, 240 note. 10 W. R, 467

76 ——— *Incumbrance created with sanction of zamindar* —In a suit by a purchaser at a sale under Bengal Act VIII of 1865 to get rid of an under tenure set up by the defendants where, in reliance upon the latter clause of s 16, it was urged that the pottah under which the defendants held was created by the late holder with the express sanction of the zamindar,—*Held* that under the strict provisions of that section no sanction of the zamindar would avail, unless the right was vested in the holder by the written engagement under which the under tenure was created or by the subsequent written authority of the person who created it or his representatives ESHAN CHUNDER MOJOOMDAR v HURISH CHUNDER GHOSE [21 W. R, 137

77 ——— *Avoidance of incumbrance—Beng Act VIII of 1869 ss 59, 60* —On a partition of the joint family property, a certain ganti tenure, which had been purchased by ...

ganti tenure It appeared that the tenure under which the defendant held the land was created, not ...

78 ——— *Beng Reg VIII of 1819 s 11—Cancelment of under-tenures* Lands ...

the Regulation the plaintiff s tenure was cancelled. Compare *Unnoda Churn Das* v *Muthura Nath Dass, I L R, 4 Calc, 860 4 C L R, 6 Surnomoyee* v *Suttees Chunder Roy Bahadoor, 10 Moore's I A, 123,* cited and discussed MOHINI CHUNDER MOZUMDAR v JOTIRMOY GHOSE [4 C. L R, 422

79 ——— Beng Reg VIII of 1819, s 11—*'Defaulting proprietor'—"Defaulter"—Incumbrances created by previous patnidar—Mokurari lease, Avoidance of—Voidable incumbrances* — In 1839 a mokurari lease was granted to the predecessors of the defendants by the then

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6. INCUMBRANCES—*continued.*

patnidar of a patni created in 1819. In 1848 the patni was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the mokurari. In 1885 the patni was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890 the plaintiffs sued to set aside the mokurari lease, contending that they were, by virtue of their purchase, entitled to avoid all incumbrances created by any patnidar, and were not restricted to avoiding merely those created by the immediate defaulter. The defendants contended that the provisions of s. 11 of the Regulation restricted the plaintiffs to avoiding incumbrances the acts of the immediate defaulter, and that, as the purchaser in 1848, and his successors in title previous to the defaulter in 1885, had not interfered with the mokurari lease, the plaintiffs could not have it set aside. *Held* (RAMPINI, *J.*, dissenting) that the plaintiffs were entitled to avoid the mokurari. *Held per* GHOSE and BEVERLEY, *JJ.*, that having regard to the policy and principle of the Regulation, a zamindar is entitled to bring a patni to sale in the same condition in which it was at the time of its creation, and that the purchaser is therefore entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. *Per* GHOSE, *J.*—The mokurari lease was an incumbrance upon the patni, but inasmuch as s. 11 distinguishes in cls. 1 and 2 between "incumbrances" and "leases," it might be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni by reason of the defaulting zamindar not having set it aside, though entitled to do so within the meaning of those words in cl. 1. If treated as a lease, the words in cl. 2, "holder of the former tenure," are wide enough to include any patnidar whether the defaulting or a previous holder. *Per* BEVERLEY, *J.*—The words "defaulting proprietor" used in cl. 1 of s. 11 must be read as the "proprietor of the tenure in default," and were not intended to be restricted to the particular proprietor for whose default the tenure is brought to sale, and the word "defaulter" used in cl. 2 of that section must be given a similarly wide interpretation. GOPENDRO CHUNDER MITTER *v.* MOKADDAM HOSSAIN . **I. L. R., 21 Calc., 702**

80. ——————— cl. (3)—*Occupancy or non-occupancy holding, whether an incumbrance.*—An occupancy or non-occupancy holding, if not held by a khodkasht raiyat, *i.e.*, a resident and hereditary cultivator, is an incumbrance and not protected from ejectment by the terms of cl. 3, s. 11 of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation. JOGESHWAR MAZUMDAR *v.* ABED MAHOMED SIRKAR **[3 C. W. N., 13**

81. ——— **Bengal Tenancy Act (VIII of 1885), s. 161**—*Exchange of land—Suit for recovery of possession of land.*—Exchange of land is an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. CHUNDRA SAKAI *v.* KALLI PROSANNO CHUKERBUTTY **[I. L. R., 23 Calc., 254**

82. ——————— **and s. 171**—*Payment by person interested to prevent sale—Mortgage—Incumbrance.*—A mortgage created by the operation of s. 171 of the Bengal Tenancy Act (VIII of 1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. PASUPATI MOHAPATRA *v.* NARAYANI DASSI . **I. L. R., 24 Calc., 537 [1 C. W. N., 519**

83. ——————— **and s. 167**—*Notice—Mortgage.*—A sale purporting to be under s. 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice must be given under s. 167 according to the procedure laid down in that section. BENI PROSAD SINHA *v.* REWAT LALL **[I. L. R., 24 Calc., 746**

84. ——————— **s. 167**—*Effect of service of notice—Annulling of incumbrance—Property in possession of a person other than the purchaser.*—Service of notice under s. 167 of the Bengal Tenancy Act has the effect of annulling an incumbrance. It is not necessary for the purchaser to bring a declaratory suit to have it declared that the incumbrance is annulled. The incumbrance would be annulled even if the property be not at the time of the service of the notice under s. 167 in the possession of the purchaser, but of somebody else. PEARI LAL ROY *v.* MOHESWARI DEBI **[I. L. R., 25 Calc., 551**

85. ——————— **and ss. 65, 148, 161, and 178**—*Estoppel—Mortgagor and mortgagee—Order in execution proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.*—By a mortgage-bond, dated the 22nd August 1884, and registered, *K* created a charge in favour of the plaintiff on six talukhs for repayment of the mortgage-debt, in respect of two of which talukhs suits had been brought by the zamindar for arrears of rent, and decrees obtained on the 6th June 1885, before the coming into operation of the Bengal Tenancy Act (VIII of 1885). After that Act had come into force, these decrees were assigned to *G*, a benamidar for *P*, for execution, and on his seeking to execute them, he was opposed by *K* on the ground that, as the transfer of the decree by assignment, and the subsequent application for execution, were made after the Bengal Tenancy Act had come into force, and as *G* the

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6 INCUMBRANCES—*continued*

assignee had acquired no interest in the talukhs, his application for execution could not be granted under s 148, cl (*h*) of that Act On the 8th July 1886 the Court overruled this objection and ordered execution to issue, holding that, as the decrees in the rent suits were passed before the Tenancy Act came into operation the execution should proceed under the old law In execution of the decrees, the two talukhs were put up for sale, and purchased by *G* as benamidar for *P* In a suit brought by the plaintiff the mortgagee, against *K* and *P* (and others representing others of the six talukhs), it was contended so far as the two talukhs were concerned, that the plaintiff, though not a party to the execution proceedings was bound by the order of the 9th July 1886 made in the course of those proceedings, that *P*, having purchased the two talukhs at sales for arrears of rent, had acquired them free from all incumbrances, that the plaintiff s mortgage was not a notified incumbrance within the meaning of s 161 of the Tenancy Act, and that he was therefore not entitled to have his mortgage-lien declared against

mortgagee *Dooma Sahoo* v *Joonarain Lall* 12 *W R* 362 4 *B L R*, *A C*, 27 *note* *Tribhobun Singh* v *Jhono Lall* 18 *W. R*, 206, *Bonomali Nag* v *Koylash Chunder Dey I L R*, 4 *Calc* 692 *Madho Pershad Singh* v *Purshan Ram I L R*, 4 *Calc* 520 and *Sitaram* v *Amir Begam, I L R*, 8 *All*, 324 referred to The proprietor of an estate cannot be said to represent the whole estate after he has mortgaged it, and this distinguishes the case of a mortgagor as representing an estate from that of a Hindu widow, or shebait, who are held to represent the estate so as to bind the reversioner or the succeeding shebait The interest of a mortgagee in an estate may be greater than that left in the mortgagor or as in the present case where it was no part of the mortgagor s interest to protect the incumbrance, the interests of the mortgagor and mortgagee are not identical, the balance of justice and expediency therefore is in favour of not allowing a mortgagee to be bound by an order made against his mortgagor Nor is there anything in the provisions of the rent law against that view A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure who can show no sufficient cause for not registering his name, and may be

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sufficient conformity with the rent law to be operative in annulling a prior mortgage, or other incumbrance, must be determined in the presence of the party claiming the benefit of the incumbrance *Tirbhobun Singh* v *Jhono Lal, 18 W R*, 206, and *Madho Pershad Singh* v *Purshan Ram, I L R*, 4

SALE FOR ARREARS OF RENT —*continued.*

6 INCUMBRANCES—*continued*

Calc, 520 referred to. *Held* also that, though the rent decrees were passed under the old rent law, the assignment and the application by the assignee for execution having been made after the Bengal Tenancy Act came into force, cl (*h*) of s 148 of that Act applied to the execution proceedings [*Ranjit Singh* v *Meherban Koer, I L R*, 3 *Calc* 663] and the sale on such an application, which is prohibited by that clause must be held to be no sale under the rent law The clause does not affect any vested right All that it prohibits is an application for the enforcement of the decree by an assignee and that is a matter of procedure If any right is affected it is not a right of the decree holder but the right of the assignee of the decree to apply for execution, and in this case there was no such assignee before the Bengal Tenancy Act came into force The mode provided by s. 167 of the Bengal Tenancy Act is the only mode in which incumbrances can be annulled by purchasers of tenures for arrears of rent, and that mode not having been followed in this case, the incumbrance on the two talukhs was not annulled S 65 of the Tenancy Act, which provides that the tenure or holding shall be liable to sale in execution of a decree for the rent thereof and the rent shall be a first charge thereon' only intends what is laid down in Ch XIV of the Act namely, that the charge should be enforced by the sale of the tenure or holding free of incumbrances, and if in any case the decree for rent either has not been or cannot be, enforced by the sale of the tenure, the charge created by s 65 cannot be enforced in any other way No reason therefore could be shown under that section for making the sale in satisfaction of the plaintiff s mortgage, subject to the rent decree as a first charge SOSHI BHUSUN GUHA *v* GOGAN CHUNDER SHAHA

[I. L R., 22 Calc, 364

86 ——————— and s 165—
Notice to annul encumbrance, whether necessary, when the purchaser and incumbrancer are the same person—After a mortgage-decree was passed the mortgaged property was sold in execution of a decree for rent and was purchased by the mortgagee decree holder The mortgage decree pro

mortgagee decree holder preferred a second appeal *Held* that, even if the sale was under s 165 of the

SALE FOR ARREARS OF RENT
—*continued.*

6. INCUMBRANCES—*continued.*

patnidar of a patni created in 1819. In 1848 the patni was sold for arrears of rent under the provisions of Bengal Regulation VIII of 1819, but the purchaser at that sale did not interfere with the mokurari. In 1885 the patni was again brought to sale under the same Regulation for arrears of rent, the default being made by one of the successors of the purchaser in 1848, and at this sale it was purchased by the plaintiffs. In 1890 the plaintiffs sued to set aside the mokurari lease, contending that they were, by virtue of their purchase, entitled to avoid all incumbrances created by any patnidar, and were not restricted to avoiding merely those created by the immediate defaulter. The defendants contended that the provisions of s. 11 of the Regulation restricted the plaintiffs to avoiding incumbrances the acts of the immediate defaulter, and that, as the purchaser in 1848, and his successors in title previous to the defaulter in 1885, had not interfered with the mokurari lease, the plaintiffs could not have it set aside. *Held* (RAMPINI, *J.*, dissenting) that the plaintiffs were entitled to avoid the mokurari. *Held per* GHOSE and BEVERLEY, *JJ.*, that having regard to the policy and principle of the Regulation, a zamindar is entitled to bring a patni to sale in the same condition in which it was at the time of its creation, and that the purchaser is therefore entitled to avoid all incumbrances imposed upon it since its creation, whether by the actual defaulter or by any of his predecessors. *Per* GHOSE, *J.*—The mokurari lease was an incumbrance upon the patni, but inasmuch as s. 11 distinguishes in cls. 1 and 2 between "incumbrances" and "leases," it might be regarded as the latter. If treated as an incumbrance, it must be held to have accrued upon the patni by reason of the defaulting zamindar not having set it aside, though entitled to do so within the meaning of those words in cl. 1. If treated as a lease, the words in cl. 2, "holder of the former tenure," are wide enough to include any patnidar whether the defaulting or a previous holder. *Per* BEVERLEY, *J.*—The words "defaulting proprietor" used in cl. 1 of s. 11 must be read as the "proprietor of the tenure in default," and were not intended to be restricted to the particular proprietor for whose default the tenure is brought to sale, and the word "defaulter" used in cl. 2 of that section must be given a similarly wide interpretation. GOPENDRO CHUNDER MITTER *v.* MOKADDAM HOSSAIN . I. L. R., 21 Calc., 702

80. ———— cl. (3)—*Occupancy or non-occupancy holding, whether an incumbrance.*—An occupancy or non-occupancy holding, if not held by a khodkasht raiyat, *i.e.*, a resident and hereditary cultivator, is an incumbrance and not protected from ejectment by the terms of cl. 3, s. 11 of Regulation VIII of 1819, and may be annulled by a purchaser at a sale under the said Regulation. JOGESHWAR MAZUMDAR *v.* ABED MAHOMED SIRKAR [3 C. W. N., 13

81. ———— Bengal Tenancy Act (VIII of 1885), s. 161—*Exchange of land—Suit for recovery of possession of land.*—Exchange of land is an incumbrance within the meaning of s. 161 of the Bengal Tenancy Act. CHUNDRA SÁKAI *v.* KALLI PROSANNO CHUKERBUTTY [I. L. R., 23 Calc., 254

82. ———— and s. 171—*Payment by person interested to prevent sale—Mortgage—Incumbrance.*—A mortgage created by the operation of s. 171 of the Bengal Tenancy Act (VIII of 1885) is not an incumbrance within the meaning of s. 161 of that Act, and is not liable to be annulled as such at the instance of a purchaser of a holding at a sale in execution of a decree for arrears of rent. PASUPATI MOHAPATRA *v.* NARAYANI DASSI . I. L. R., 24 Calc., 537 [1 C. W. N., 519

83. ———— and s. 167—*Notice—Mortgage.*—A sale purporting to be under s. 161 and the following sections of the Bengal Tenancy Act (VIII of 1885) does not *ipso facto* cancel incumbrances. Notice must be given under s. 167 according to the procedure laid down in that section. BENI PROSAD SINHA *v.* REWAT LALL [I. L. R., 24 Calc., 746

84. ———— s. 167—*Effect of service of notice—Annulling of incumbrance—Property in possession of a person other than the purchaser.*—Service of notice under s. 167 of the Bengal Tenancy Act has the effect of annulling an incumbrance. It is not necessary for the purchaser to bring a declaratory suit to have it declared that the incumbrance is annulled. The incumbrance would be annulled even if the property be not at the time of the service of the notice under s. 167 in the possession of the purchaser, but of somebody else. PEARI LAL ROY *v.* MOHESWARI DEBI [I. L. R., 25 Calc., 551

85. ———— and ss. 65, 148, 161, and 176—*Estoppel—Mortgagor and mortgagee—Order in execution proceedings against mortgagee—Res judicata—Decree obtained before Bengal Tenancy Act came into force—Execution under former Rent Law—Incumbrance—Mode of annulling incumbrance—Sale for arrears of rent—Charge of rent as first charge on tenure—Sale in execution of mortgage-decree—Decree for sale.*—By a mortgage-bond, dated the 22nd August 1884, and registered, *K* created a charge in favour of the plaintiff on six talukhs for repayment of the mortgage-debt, in respect of two of which talukhs suits had been brought by the zamindar for arrears of rent, and decrees obtained on the 6th June 1885, before the coming into operation of the Bengal Tenancy Act (VIII of 1885). After that Act had come into force, these decrees were assigned to *G*, a benamidar for *P*, for execution, and on his seeking to execute them, he was opposed by *K* on the ground that, as the transfer of the decree by assignment, and the subsequent application for execution, were made after the Bengal Tenancy Act had come into force, and as *G* the

SALE FOR ARREARS OF RENT —*continued*

6 INCUMBRANCES—*continued*

assignee had acquired no interest in the talukhs, his application for execution could not be granted under s 148, cl (*h*), of that Act On the 8th July 1886 the Court overruled this objection and ordered execution to issue, holding that, as the decrees in the rent suits were passed before the Tenancy Act came into operation the execution should proceed under the old law In execution of the decrees the two talukhs were put up for sale, and purchased by *G* as benamidar for *P* In a suit brought by the plaintiff, the mortgagee, against *K* and *P* (and others representing others of the six talukhs), it was contended so far as the two talukhs were concerned that the plaintiff though not a party to the execution proceedings was bound by the order of the 9th July 1886 made in the course of those proceedings, that *P*, having purchased the two talukhs at sales for arrears of rent, had acquired them free from all incumbrances, that the plaintiff s mortgage was not a notified incumbrance within the meaning of s 161 of the Tenancy Act, and that he was therefore not

mortgagor, not representing his interest sufficiently to make that order binding on the plaintiff as mortgagee *Dooma Sahoo* v *Jocnarain Lall, 12 W R 362 4 B L R, A C, 7 note* *Tribhobun Singh* v *Jhono Lall, 18 W R, 206*, *Bonomali Nag* v *Koylash Chunder Dey, I L R, 4 Calc, 692*, *Madho Pershad Singh* v *Purshan Ram, I L R, 4 Calc 520* and *Sitaram* v *Amir Begam I L R, 8 All, 324*, referred to The proprietor of an estate cannot be said to represent the whole estate after he has mortgaged it, and this distinguishes the case of a mortgagor as representing an estate from that of a Hindu widow, or shebait who are held to represent the estate so as to bind the reversioner or the succeeding shebait The interest of a mortgagee in an estate may be greater than that left in the mortgagor, or, as in the present case where it was no part of the mortgagor s interest to protect the incumbrance, the interests of the mortgagor and mortgagee are not identical, the balance of justice and expediency therefore is in favour of not allowing a mortgagee to be bound by an order made against his mortgagor Nor is there anything in the provisions of the rent law against that view A decree for rent of a tenure obtained against the registered tenant binds an unregistered transferee of the tenure who can show no sufficient cause for not registering his name, and may be

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[I L R., 22 Calc, 364

86 ———————— **and s 165—** *Notice to annul encumbrance whether necessary, when the purchaser and incumbrancer are the same person*—After a mortgage-decree was passed the mortgaged property was sold in execution of a decree for rent and was purchased by the mortgagee decree holder The mortgage decree pro

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SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*continued.*

Bengal Tenancy Act, the incumbrance had not been annulled by proceedings under s. 167, and the appeal ought to be dismissed. GOLUK CHUNDER DAS *v.* RAM SUNKER SUTT . . 4 C. W. N., 268

87. ——— "*Purchaser,*" *Meaning of—Incumbrance, Annulment of, when purchaser himself is the incumbrancer—Transfer of Property Act (IV of 1882), s. 101.*—The purchaser contemplated by s. 167 is a purchaser independently of the incumbrancer, and where the incumbrancer himself purchases the property encumbered to him, in execution of a decree for arrears of rent, it is not necessary for him to give notice of annulment of his incumbrance under s. 167 of the Bengal Tenancy Act. Under s. 101 of the Transfer of Property Act, which is of general application, his incumbrance is extinguished unless he evinces an intention to keep it alive. Where a mortgagee has purchased the mortgaged property in execution of a rent decree, he is entitled to proceed against the other properties of the mortgagor. *Goluk Chunder Das* v. *Ram Sunker Sutt, 4 C. W. N.*, 268, dissented from. MASTULLAH MANDAL *v.* GYAN MAMUD SAH . . . . 4 C. W. N., 735

88. ——— Madras Rent Recovery Act, s. 38—*Incumbrance.*—As the tenancy of an ordinary pottahdar only confers on him a right of occupancy until default in payment of rent and the determination of the tenancy under the provisions of the Rent Act, any incumbrance created by such pottahdar on the land cannot affect the landholder's statutory power of sale under the Act or the rights of the purchaser at such sale. KONDI MUNISAMI CHETTI *v.* DAKSHANAMURTHI PILLAI . I. L. R., 5 Mad., 371

89. ——— *Purchase by creditor—Civil Procedure Code, 1882, ss 376, 295—Sale of tenant's interest by landlord pending attachment by Civil Court.*—The interest of a tenant in certain land having been attached by his creditor in execution of a decree for money, the landlord attached the same land for arrears of rent, brought it to sale, and purchased it under the provisions of the Rent Recovery Act. The creditor subsequently purchased the interest of the tenant, which was sold in execution of his decree. In a suit by the landlord to have the sale to the creditor declared invalid,—*Held* that the landlord's purchase was subject to the creditor's attachment. SUBRAMANYA *v.* RAJARAM [I. L. R., 8 Mad., 573

90. ——— *Sale of tenant's interest—Prior incumbrance—Rights of purchaser.*—A sale by a landlord of a tenant's interest in his holding for non-payment of rent under the provisions of s. 38 of the Rent Recovery Act (Madras Act VIII of 1865) does not defeat existing incumbrances. *Munisami* v. *Dukshanamurti, I. L. R., 5 Mad., 371,* overruled. RAJAGOPALASHARI *v.* SUBBARAYA MUDALI [I. L. R., 7 Mad , 31

See ZAMINDAR OF RAMNAD *v.* RAMAMANY AMMAL . . . . I. L. R., 2 Mad., 234

SALE FOR ARREARS OF RENT —*continued.*

6. INCUMBRANCES—*concluded.*

91. ——— *Mulageni lease—Encumbered tenancy.*—*A* demised land to *B* on a mulageni lease. *B* mortgaged his tenancy to *A*. The rent under the mulageni lease fell into arrears, and *A* obtained a decree against *B* for the amount. *Held* that arrears of rent are not a first charge on the tenant's holding, and accordingly that the landlord could not execute his decree by sale of the tenancy free from the mortgage created by the tenant. *Rajagopal* v. *Subbaraya, I. L. R., 7 Mad., 31,* followed. PADAKANNAYA *v.* NARASIMMA [I. L. R., 10 Mad., 266

7. RIGHTS AND LIABILITIES OF PURCHASERS.

92. ——— Right of purchaser—*Right to khas possession.*—A raiyat's tenure having been sold for arrears of rent under an Act X decree, the purchaser was held to be entitled to be put in khas possession of the entire tenure as it originally stood, notwithstanding that the sons of the raiyat had been occupying huts on the land for more than twenty years. The circumstance that the purchaser happened to be the superior landlord did not diminish his right TEELOTTUMA DEBEE *v.* BROJO LALL SHAMUNT . . . . 8 W. R., 478

93. ——— *Right to nij-jote land.*—The right to hold nij-jote lands necessarily passes with the sale to the auction-purchaser. JOY DUTT JHA *v.* BAYEE RAM SINGH . 7 W. R., 40

94. ——— *Right to rent due at time of sale.*—A purchaser of a patni sold in execution buys it with all its liabilities, including instalments due to the zamindar, and cannot recover them from the original patnidar. KHODA BUKSH *v.* DEGUMBUREE DOSSEE . . W. R., 1864, 207

95. ——— *Right to rent—Liability of patnidar for rent—Beng. Reg. VIII of 1819, s. 8, cl. 3.*—Where a patnidar's possession is disturbed by the zamindar, and he is prevented from collecting the rents of certain kists, he is not liable for these kists. Where a talukh is sold for arrears, the patnidar who is sold out is not liable for the rent of the month in which the zamindar presented the petition enjoined by cl. 3, s. 8, Regulation VIII of 1819. DARIMBA DEBIA *v.* NILMONEE SINGH DEO [15 W. R., 180

96. ——— *Right to rent—Liability of surety of patnidar.*—The purchaser of the rights and interests of a patnidar in a patni talukh sold for arrears of rent purchases the talukh subject to whatever claims the zamindar has against it for rent, and has no claim against the surety of the patnidar by reason of the name of the latter appearing as the owner of the talukh in the zamindar's papers or otherwise. He may sue the other sharers for the money which he has paid on their account. OBHOY CHUNDER BUNDOPADHYA *v.* NILAMBUR MOOKERJEE [W. R., 1864, 73

SALE FOR ARREARS OF RENT —*continued*

7 RIGHTS AND LIABILITIES OF PURCHASERS—*continued*

97. ———— *Sale under Beng Act VIII of 1865—What passes at sale*—As a general rule whe ... a decree under tl ... 1865, the whole ... reservation made ... GOBIND BISWAS v DUMOUNTEE DABEE [13 W. R., 304

98 ———— *Purchaser of shareholder's rights—Sale under Beng Act VIII of 1865*—The purchaser of a partnership in a tenure—in other words, of a shareholder's rights—acquired no right to retain possession against a person who bought the tenure itself when sold for arrears under Bengal Act VIII of 1865 HURO NARAIN GIREE v DURGA CHURN GIREE . 15 W R, 319

99. ———— *Purchase by shareholders—Ousut howlas, Effect of sale on—Recorded tenants*—A shareholder is not precluded from purchasing the whole of a howla sold *bonâ fide* for arrears of rent due from himself and his co sharer All ousut howlas created by the co sharers fall with the sale of a howla unless specially protected by the howla lease A zamindar may bring a suit for arrears only against the tenant whose name is ...

CHURN BOSE v MEHAROONISSA BIBEE [7 W. R., 318

100 ———— *Liability of co sharers on sale of tenure*—Where a decree was for arrears of rent due upon a tenure it was held that, though the sale proceedings specified that the rights and interests of certain parties were sold yet the tenure itself was sold and all the co sharers were jointly liable ALIMOODDEEN v SABIR KHAN [8 W R, 60

Contra, LALLA SABIL CHAND v GOODUR KHAN [22 W. R, 187

101. ———— *Right of purchaser of transferable under tenure to void leases—Right to enhance rent*—The purchaser of a transferable under tenure in execution of a decree for rent may void any lease or holding within the tenure not specially protected by law and consequently may sue for a kabul at at rates paid for similar lands in the neighbourhood SRISHTEEDHUR MUNDUL v GOBIND SURUCKAR 6 W R, Act X, 15

102 ———— *Act X of 1859, s 105—Beng Reg VIII of 1819 s 11—Title created by purchaser*—Where a tenant committed ...

created by himself Where he himself has sold to a third party, he is bound to recognize that party's purchase, and also all *bonâ fide* leases under that party Where the lease by which a howla tenure is created does not expressly reserve it for sale for non payment of rent the rights of an auction-purchaser cannot arise under Regulation VIII of 1819 MEHEROONISSA BIBEE v HUR CHURN BOSE [10 W. R, 220

103 ———— *Principle with regard to purchasers at revenue sales*—The principle laid down in the case of *Surnomoyee v Suttees Chunder Roy, 2 W R P C 14 10 Moore's I A, 123,* with respect to the rights of purchasers at sales for arrears of revenue is applicable to sales for arrears of rent under Regulation VIII of 1819 WOMANATH ROY CHOWDHRY v ROGHOONATH MITTER 5 W R, Act X, 63

104 ———— *Rent accrued due against Hindu female heir after death of last full owner—Effect of sale in execution under Beng. Act VIII of 1869—Personal execution against female heir*—A claim for arrears of rent against a female heir accrued due after the death of the last full owner is a personal claim against her, therefore by a sale held under the provisions of Bengal Act VIII of 1869 in execution of a decree for arrears of such rent obtained against her by some of the co- ...

2 I A 275 and *Mohima Chunder Roy Chowdhry* v *Ram Kishore Acharjee Chowdhry, 15 B L R, 142 23 W R, 174* followed BRAJA LAL SEN v JIBAN KRISHNA ROY I L R, 26 Calc, 286

105 ———— Liability of purchaser—*Date from which purchaser's liability for rent* ...

purchase BEEPIN BEHAREE BISWAS v JUDOONATH HAZRAH 21 W. R, 367

106 ———— *Liability to condition in lease—Right of re entry*—A dur patni lease granted upon the payment of a bonus contained a condition that if the annual rent remained for a longer period than one month in arrear the lessor should have a right of re entry The lessor, upon default in payment of rent without availing himself of the forfeiture, instituted a summary suit for the arrears of rent, and upon an award therein the lands were sold for such arrears. *Held* that the purchaser, who bought the patni tenure without notice of the condition for forfeiture, was not subject to that condition DEENDYAL PARAMANICK v JUGGESHUR ROY Marsh, 252: 2 Hay, 21

SALE FOR ARREARS OF RENT —*continued.*

7. RIGHTS AND LIABILITIES OF PURCHASERS—*continued.*

107. ——— *Liability to decree in ejectment suit—Previous purchase by mortgagee of portion of tenure—Right of purchaser to question by suit the validity of decree for ejectment if not a party to the rent suit.*—In a suit for arrears of rent by a mokuraridar against his dar-mokuraridar, a decree was passed ejecting the latter, and, as a consequence, the tenure of the dar-mokuraridar was cancelled. *Held* that a mortgagee from the dar-mokuraridar, who had, previously to the rent suit, obtained a decree on his mortgage and purchased himself at the auction-sale, and who had not been made a party to the rent suit, was entitled to question by suit the validity of the decree obtained in the rent suit ordering ejectment of the dar-mokuraridar. MADHOO PROSHAUD SINGH *v.* PURSHAN RAM

[I. L. R., 4 Calc., 520

108. ——— *Priority of auction-purchasers—Sale set aside by an ex-parte decree and afterwards confirmed—Notice.*—The plaintiff and the defendant purchased the same tenure at successive sales, held in execution of two decrees under the provisions of s. 59 of Act VIII of 1869, for arrears of rent due in respect of different periods. Defendant's sale was first in point of time, but was set aside on the judgment-debtor obtaining an *ex-parte* decree against the defendant. The suit was, however, restored and ultimately dismissed, and the defendant's purchase remained undisturbed. In the meantime, however, after the *ex-parte* decree but before the dismissal of that suit, the tenure had been again sold for further arrears of rent, which had accrued before the defendant's purchase and was bought by the plaintiff. *Held* that the defendant's title must prevail, being prior in point of time, and that the defendant was under no obligation to discharge the arrears of rent for which the second decree was obtained, or to give notice of his purchase to the plaintiff. RAM CHUNDER SADHU KHAN *v.* SAMIR GAZI . .. . I. L. R., 20 Calc., 25

109. ——— *Patni tenure, Sale of—Registration in zamindar's serishta—Rights of zamindar—Beng. Reg VIII of 1819, ss. 5, 7—Bengal Tenancy Act (VIII of 1885), s. 13.*—A patni talukh was sold in execution of a decree, but the auction-purchaser, although he obtained possession, did not get himself registered in the zamindar's serishta. In a suit by the zamindar against the former holder of the patni for rent due for a period previous to the sale,—*Held* that the suit lay against him, and that the rights of the zamindar were not affected by the existence of the remedy provided by s. 7 of Bengal Regulation VIII of 1819. *Lukhinarain Mitter* v. *Khetter Pal Singh Roy, 13 B. L. R., 146,* referred to. SURENDRONATH PAL CHOWDHRY *v.* TINCOWRI DASI I. L. R., 20 Calc., 247

110. ——— *Liability of auction-purchaser for arrears of rent prior to purchase—Bengal Tenancy Act (VIII of 1885), ss. 65 and 169, cl. (c)—Rent, Suit for.*—The plaintiffs sued the first five defendants for arrears of rent due in respect of a certain tenure, and obtained a decree on the 16th of April 1888. In execution of that decree, the tenure was sold on the 8th April 1891, the defendants 6, 7, and 8 being the auction-purchasers. On the 18th of April 1891 the plaintiffs sued all eight defendants for the arrears of rent which had become due between the 16th April 1888 and the 8th April 1891. *Held* that the auction-purchasers (defendants 6, 7, and 8) were not liable, the arrears of rent sued for having become due prior to their purchase. FAEZ RAHAMAN *v.* RAMSUKH BAJPAI

[I. L. R., 21 Calc., 169

111. ——— *Sale on basis of decree on compromise—Auction-purchaser, Title of—Liability of purchaser for rent accruing due after his purchase, but before confirmation of sale—Effect of compromise as against purchaser—Rent, Accrual of—Bengal Tenancy Act, s. 53.*—A tenant, when sued for arrears of rent of a jote, compromised the case by executing a solehnama agreeing to pay rent at 13 annas per bigha on 4,300 bighas. Subsequently the jote was sold, in execution of a decree passed on the basis of the solehnama, and was purchased by the defendant on the 20th March 1889, the sale being confirmed on the 7th August 1889. In a suit instituted by the landlord against the auction-purchaser for arrears of rent for the whole year 1296 (13th April 1889 to 12th April 1890),—*Held* that the purchaser was liable for the whole instalment of rent accrued due after the date of his purchase, but before the confirmation of the sale, notwithstanding that his title was not perfected until the latter date. Rent is to be regarded not as accruing from day to day, but as falling due only at stated times according to the contract of tenancy or, in the absence of any contract according to the general law laid down in s. 53 of the Bengal Tenancy Act. *Held* also that he was liable for rent under the terms of the solehnama irrespective of any question as to whether the quantity of land there mentioned was correct or not. SATYENDRA NATH THAKUR *v.* NILKANTHA SINGH . I. L. R., 21 Calc., 383

112. ——— *Bengal Tenancy Act (VIII of 1885), ss. 11, 12, and 13—Sale of a tenure in execution of a decree not for arrears of rent—Effect of non-payment of landlord's fee or the fee for service of notice of the sale on the landlord before the confirmation of sale.*—Under s. 13 of the Bengal Tenancy Act, when a permanent tenure is sold in execution of a decree other than a decree for arrears of rent due in respect thereof, and the landlord's fee prescribed by s. 12 of the said Act is not paid before the confirmation of the sale, the sale is invalid. BABAR ALI *v.* KRISHNAMANINI DASSI

[I. L. R., 26 Calc., 603

113. ——— Right of purchaser—*Sale of tenant's interest by creditor—Subsequent sale by*

SALE FOR ARREARS OF RENT —*continued*

7 RIGHTS AND LIABILITIES OF PURCHASERS—*continued*

landlord for arrears of rent—Right of purchaser —The right, title and interest of a tenant in certain land having been attached sold and purchased in execution of a decree upon a mortgage by his creditor in 1874 the landlord, in pursuance of a notice under s. 39 of the Rent Recovery Act (Madras Act VIII [illegible] Civil Court's sale sold

due by the

ving passed

there was

sale by the

landlord under the provisio s of s 35 of the Rent Recovery Act VIRAPPA NAYAK *v* KATHANA TALAVACHI I L R, 6 Mad, 428

114 ——————— *Sale of occupancy holding at the instance of landlord in execution of money decree—Subsequent sale of the same for arrears of rent—Bengal Tenancy Act (VIII of 1885) s 22—Damages—Refund of purchase money* —Defendant No 10 the landlord in execution of a decree for money, put to sale the occupancy holding of an occupancy raiyat the defendant No 1, and having purchased it himself made a settlement of the same with defendants Nos 2 3, and 4 the landlord subsequently brought a suit against defendant No 1 for recovery of rent due from him for the past years and brought to sale the same holding which was thereupon purchased by the plaintiff In a suit by the latter for recovery of possession —*Held* that the plaintiff did not acquire any title inasmuch as the landlord by his own act had brought the raiyati right of the defendant No 1 to a termination and there was no subsisting right in that defendant s ch as the plaintiff could acquire by sale *Held* further that the plaintiff was entitled to get a refund of the purchase money from the landlord and that a separate suit for that purpose was not necessary RAM SARAN PODDAR *v* MAHOMED LATIF 3 C W N, 62

115 ——————— *Mortgage of dar-talukh—Its subsequent transformation into a patni talukh—Purchaser in execution of a decree for arrears of patni rent—Right of the purchaser* [illegible]

principal defendants In a suit for possession of the

J) that the creation of a mortgage gives certain rights to the mortgagor over the mortgaged property, but it does not necessarily prevent third parties from dealing with the mortgagor still as the owner of the

property, nor is the mortgagee entitled in every case

principle JOTINDRA MOHUN PAL *v* GODADHUR MADAK 2 C W. N, 29

8 SECOND SALE

116 ——— **Sale for prior arrears after sale for arrears of rent** —Where a tenure has once been sold for its own arrears it cannot be again put up to sale for the arrears due on account of a previous period *Lutifun v Meah Jan, 6 W. R, 112,* followed PRANGOUR MOZOOMDAR *v* HIMANTA KUMARI DEBYA [I L R, 12 Calc, 597

9 SURPLUS PROCEEDS OF SALE

117 ——— **Right to surplus proceeds** —*Attachment in hands of Collector* —The surplus proceeds of a sale made for default of payment of patni rent though under attachment by a Civil Court in the hands of the Collector continues to be the property of the patnidar until ordered to be paid away by an order from such Court SADFOOLLAH KHAN *v* LUCHMEEPUT SINGH DOOGUR [13 W R, 58

118 ——————— *Priority—Surplus proceeds of sale under s 59 Beng Act VIII of 1869—Decree against dar patnidar after sale of his tenure* —A patnidar caused to be sold the

patni rent due in respect of the period between April and October 1876 and having obtained a decree attached the surplus proceeds in the Collectorate,

SALE FOR ARREARS OF RENT —*continued.*

9. SURPLUS PROCEEDS OF SALE—*continued.*

119.—————— *Beng. Reg. VIII of 1819, s. 17, cl. (5)—Patni talukh—Attachment — Priority.*—The patnidar of a talukh granted a dar-patni to the defendants on the 10th of February 1859. The same patnidar afterwards mortgaged the patni talukh to the plaintiffs who obtained a decree on their mortgage on the 28th September 1874. The patni was sold for its own arrears on the 17th November 1876; and after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 4th of November 1876. On the 12th January 1877 the defendants instituted a suit against the patnidar, under cl. 5, s. 17, Regulation VIII of 1819, for compensation for the loss of the dar-patni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds. In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*Held* that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree. SURNOMOYEE DASSYA *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 7 Calc., 173 : 8 C. L. R., 341

120.—————— *Sale of patni—Mortgage security, Conversion of—Surplus sale-proceeds, Charge of mortgagee upon—Transfer of Property Act (IV of 1882), s. 73.*—A patni talukh having been sold for arrears of rent under Regulation VIII of 1819, the surplus sale-proceeds held in deposit in the Collectorate were drawn out at intervals by the holders of money decrees against the patnidars. The plaintiff, who held a mortgage of the talukh, sued to recover from these decree-holders the amount of his unsatisfied claim. Two of the defendants pleaded that, over and above the amount taken by them, there remained in deposit sufficient money to satisfy the plaintiff, and that the other unsecured creditors who had drawn out this balance should alone be held liable. *Held* that the surplus sale-proceeds were to be regarded as the shape into which the plaintiff's security was converted, and as before such conversion the security could not be split up into parts, the plaintiff was entitled to realize the balance due to him out of the whole of the surplus, as otherwise his security would be diminished. GOSTO BEHARY PYNE *v.* SHIB NATH DUTT . I. L. R., 20 Calc., 241

121. —————— *Transfer of Property Act (IV of 1882), s. 73—Rights of purchasers—mortgage.*—S. 73 of the Transfer of Property Act only gives a right to the mortgagee over the residue of the sale-proceeds, and refers to cases where the law otherwise provided that the effect of the sale is to nullify a mortgage: it is not intended in any way to enlarge the interest of the purchaser at a sale for arrears of revenue or rent.

SALE FOR ARREARS OF RENT —*continued.*

9. SURPLUS PROCEEDS OF SALE—*concluded.*

Prem Chand Pal v. Purnima Dasi, I. L. R., 15 Calc., 546 referred to. BENI PROSAD SINHA *v.* REWAT LALL . . I. L. R., 24 Calc., 746

122. —————— *Beng. Reg. VIII of 1819, s. 17—Distribution of surplus sale-proceeds—Claim by se-patnidar.*—A se-patnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Regulation VIII of 1819. MOTI LAL GHOSE *v.* BISSESSUR HAZRA . . . . . 3 C. W. N., 60

10. DEPOSIT TO STAY SALE.

123. —————— Right to sue—*Voluntary payment to stay sale—Act X of 1859, ss. 102, 103.*—A person making voluntary payments in his own name to stay a sale in execution of a decree against others could not sue under s. 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. ABDOOL WAHAB *v.* DRUMMOND

[2 W. R., Act X, 48

124. —————— Party with recognized interest—*Beng. Reg. VIII of 1819 s. 14, cl. 1.*—Cl. 1, s. 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the amount due, stay a sale of a patni, but only a party having a recognized interest in such patni. According to s. 6, even application for registration is not sufficient: that section provides what can legally be done if registration is refused. KRISTO JEEBUN BUKSHEE *v.* MACKINTOSH . W. R., 1864, 53

125. —————— Sufficiency of interest—*Suit to recover money deposited.*—The plaintiff's mother brought a suit to recover a portion of a talukh which she claimed under a will, and which she would be entitled to upon the death of the widow of the deceased owner. While the suit was pending, the talukh was put up for sale under Regulation VIII of 1819, and to prevent its being sold she paid the rent. The above suit abated by the death of the plaintiff's mother, and the plaintiff now sued the shareholders to recover the amount paid to save the talukh from sale. *Held* that the plaintiff's mother's interest in the talukh was such as entitled the plaintiff to recover the money she paid. SHARODA KOOMAREE DOSSEE *v.* MOHINEE MOHUN GHOSE

[20 W. R., 272

126. —————— Voluntary payment—*Right of mortgagee to prevent sale of mortgaged property—Voluntary payment.*—The mortgagee of a patni talukh paid certain moneys to prevent the sale of such talukh for arrears of zamindari rent. *Held* that this was not a voluntary payment, and could not be so considered even in the case where the mortgagee, by a covenant in his mortgage-deed, had insured himself against loss by such sale. *Nogender Chunder Ghose* v. *Kaminee Dossi, 11 Moore's I. A., 241,* followed. MOHESH CHUNDER BANERJEE *v.* RAM PURSONO CHOWDHRY

[I. L. R., 4 Calc., 539 : 6 C. L. R., 280

SALE FOR ARREARS OF RENT —continued.

10 DEPOSIT TO STAY SALE—*continued.*

See DULICHAND *v* RAMKISHEIN SINGH
[I. L. R, 7 Calc, 648

will lie. SREENATH HOLDAR *v* RAM SOONDUR CHUCKERBUTTY . 4 W. R., S. C. C Ref, 4

128 ———— *Right of suit* — An under tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the security of the tenure which he preserves, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit AMBIKA DEBI *v* PRANHARI DAS
[4 B. L. R., F. B, 77

S C UMBIKĀ DEBIA *v* PRANHUREE DOSS
[13 W. R, F. B, 1

129. ———— *Right of suit*—*Beng Reg VIII of 1819—Non registration of*

lation for the registration of any vendee or donee In 1860 *S* sold the dar patni lease to *K*, the deed of sale which was duly registered providing for mutation of names in the patnidars' books No such mutation was ever effected by *K*, who was never he rent of In 1864, arrear, the zamindar proceeded to sell the patni under Regulation VIII of 1819 Thereupon *K* in order to protect his under-tenure, deposited in the Collectorate, on 17th November 1864, a sum of money, on which

due to *L* and *R*. Th s *L* and *R* refused to allow, or's Court arrears of the bene- igh Court, on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K*. On 30th October 1867 *K* brought a regular suit against *S* and *L* and *R* to recover the amount of the deposit, and obtained a decree, but the dis- 1869 at he — — possessed by him

in the Collectorate. LUCKHINARAIN MITTER *v.* KHETTRO PAL SINGH ROY
[13 B. L. R, P. C, 146: 20 W. R, 380

Affirming the decision of the High Court in S. C KHETTER PAUL SINGH *v* LUCKHEE NARAIN MITTER
[15 W. R, 125

OKHOY COOMAR CHATTERJEE *v* DHIRAJ MAHTAB CHUND . . 22 W. R, 299

130. ———— *Payment made by vendee of dar-patnidar—Voluntary payment.*—A payment made by the vendee of the dar patnidar (who has not obtained registration) to save the patni from sale is a voluntary payment, and the registered dar patnidar cannot seek to deduct the amount from the rent due by him. LUKHEENARAIN MITTER *v.* SEETANATH GHOSE
[1 Ind. Jur, N S, 317: 6 W R, Act X, 8

Payment of *Reg VIII of* aser of a patni rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase, the dar-patnidar had paid the amount of arrears of patni rent for the year 1 84 (1877), in order to save the patni from being sold under Regulation VIII of 1819 and that the amount so paid con-

[I. L. R., 8 Calc, 877: 11 C. L R, 37

132 ———— *Payment by dar-patnidar—Beng Reg VIII of 1819—Beng Act VIII of 1865, s 62*—The zamindar of an estate, in which the plaintiff and defendant respectively had purchased patni and dar patni tenures obtained decrees for arrears of rent accruing before their purchases, though one of the decrees was obtained subsequently to defendant's purchase, and in execution of these decrees he advertised the patni for sale, and the amounts due were paid into Court by the defendant to protect the tenure from sale In a suit by the patnidar against the dar-patnidar for arrears of rent accruing due subsequently to the defendant's purchase,—*Held* that the defendant was, on the construction of s 13 of Regulation VIII of 1819 and s 62, Bengal Act VIII of 1869 entitled to set off such payments against the plaintiff's claim *Nobogopal Sircar v Sreenath Bundopadhya, I. L R, 8 Calc, 877,* followed LALIT MOHUN SHAHA *v* SRINIBAS SEN . I. L R, 13 Calc., 331

133. ———— *Payment by dar-patnidar—Notice of title to tenants—Beng Reg VIII of 1819, s 13*—A dar patnidar who has paid a deposit in order to stay the sale of the superior tenure under cl 4, s 13, Regulation VIII of 1819, and has come into possession of the tenure, and is entitled to the profits of it, is bound to give notice

SALE FOR ARREARS OF RENT —*continued.*

9. SURPLUS PROCEEDS OF SALE—*continued.*

119. ——— *Beng. Reg. VIII of 1819, s. 17, cl. (5)—Patni talukh—Attachment — Priority.*—The patnidar of a talukh granted a dar-patni to the defendants on the 10th of February 1859. The same patnidar afterwards mortgaged the patni talukh to the plaintiffs, who obtained a decree on their mortgage on the 28th September 1874. The patni was sold for its own arrears on the 17th November 1876; and after payment of rent and all expenses, there remained a surplus in the hands of the Collector, which was attached by the plaintiffs in execution of their decree on the 9th of November 1876. On the 12th January 1877 the defendants instituted a suit against the patnidar, under cl. 5, s. 17, Regulation VIII of 1819, for compensation for the loss of the dar-patni, and obtained a decree, which the Court directed should be satisfied out of the surplus sale-proceeds; and the Collector, notwithstanding the plaintiffs' attachment, allowed the defendants to obtain the amount decreed out of the surplus sale-proceeds. In a suit by the plaintiffs to recover the amount paid for compensation, on the ground that the plaintiffs' attachment was prior to the defendants' suit,—*Held* that the defendants' decree must, notwithstanding the plaintiffs' attachment, be satisfied out of the surplus sale-proceeds in priority to the plaintiffs' decree. SURNOMOYEE DASSYA *v.* LAND MORTGAGE BANK OF INDIA

[I. L. R., 7 Calc., 173 : 8 C. L. R., 341

120. ——— *Sale of patni—Mortgage security, Conversion of—Surplus sale-proceeds, Charge of mortgagee upon—Transfer of Property Act (IV of 1882), s. 73.*—A patni talukh having been sold for arrears of rent under Regulation VIII of 1819, the surplus sale-proceeds held in deposit in the Collectorate were drawn out at intervals by the holders of money decrees against the patnidars. The plaintiff, who held a mortgage of the talukh, sued to recover from these decree-holders the amount of his unsatisfied claim. Two of the defendants pleaded that, over and above the amount taken by them, there remained in deposit sufficient money to satisfy the plaintiff, and that the other unsecured creditors who had drawn out this balance should alone be held liable. *Held* that the surplus sale-proceeds were to be regarded as the shape into which the plaintiff's security was converted, and as before such conversion the security could not be split up into parts, the plaintiff was entitled to realize the balance due to him out of the whole of the surplus, as otherwise his security would be diminished. GOSTO BEHARY PYNE *v.* SHIB NATH DUTT . I. L. R., 20 Calc., 241

121. ——— *Transfer of Property Act (IV of 1882), s. 73—Rights of purchasers—mortgage.*—S. 73 of the Transfer of Property Act only gives a right to the mortgagee over the residue of the sale-proceeds, and refers to cases where the law otherwise provided that the effect of the sale is to nullify a mortgage: it is not intended in any way to enlarge the interest of the purchaser at a sale for arrears of revenue or rent. *Prem Chand Pal* v. *Purnima Dasi, I. L. R.,* 15 *Calc.,* 546 referred to. BENI PROSAD SINHA *v.* REWAT LALL . . I. L. R., 24 Calc., 746

122. ——— *Beng. Reg. VIII of 1819, s. 17—Distribution of surplus sale-proceeds—Claim by se-patnidar.*—A se-patnidar is not entitled to a share of the proceeds of a sale of the patni for arrears of rent held under Regulation VII of 1819. MOTI LAL GHOSE *v.* BISSESSUR HAZRA . . . . . 3 C. W. N., 60

10. DEPOSIT TO STAY SALE.

123. ——— **Right to sue**—*Voluntary payment to stay sale—Act X of 1859, ss. 102, 103.*—A person making voluntary payments in his own name to stay a sale in execution of a decree against others could not sue under s. 102 or 103 of Act X of 1859 for the recovery of the money so paid by him. ABDOOL WAHAB *v.* DRUMMOND

[2 W. R., Act X, 48

124. ——— **Party with recognized interest**—*Beng. Reg. VIII of 1819 s. 14, cl. 1.*—Cl. 1, s. 14, Regulation VIII of 1819, does not contemplate that any party may, by depositing the amount due, stay a sale of a patni, but only a party having a recognized interest in such patni. According to s. 6, even application for registration is not sufficient: that section provides what can legally be done if registration is refused. KRISTO JEEBUN BUKSHEE *v.* MACKINTOSH . W. R., 1864, 53

125. ——— **Sufficiency of interest**—*Suit to recover money deposited.*—The plaintiff's mother brought a suit to recover a portion of a talukh which she claimed under a will, and which she would be entitled to upon the death of the widow of the deceased owner. While the suit was pending, the talukh was put up for sale under Regulation VIII of 1819, and to prevent its being sold she paid the rent. The above suit abated by the death of the plaintiff's mother, and the plaintiff now sued the shareholders to recover the amount paid to save the talukh from sale. *Held* that the plaintiff's mother's interest in the talukh was such as entitled the plaintiff to recover the money she paid. SHARODA KOOMAREE DOSSEE *v.* MOHINEE MOHUN GHOSE

[20 W. R., 272

126. ——— **Voluntary payment**—*Right of mortgagee to prevent sale of mortgaged property—Voluntary payment.*—The mortgagee of a patni talukh paid certain moneys to prevent the sale of such talukh for arrears of zamindari rent. *Held* that this was not a voluntary payment, and could not be so considered even in the case where the mortgagee, by a covenant in his mortgage-deed, had insured himself against loss by such sale. *Nogender Chunder Ghose* v. *Kaminee Dossi, 11 Moore's I. A.,* 241, followed. MOHESH CHUNDER BANERJEE *v.* RAM PURSONO CHOWDHRY

[I. L. R., 4 Calc., 539 : 6 C. L. R., 280

SALE FOR ARREARS OF RENT —*continued.*

10 DEPOSIT TO STAY SALE—*continued.*

See DULICHAND *v* RAMKISHEIN SINGH [I. L. R, 7 Calc, 648

127. ———— ———— *Sale of trans*

in the case of ganti jummas and other transferable tenures sold for arrears of rent under s. 105, Act X of 1859, when such payments are neither expressly nor impliedly authorized, they must be regarded as voluntary payments, for the recovery of which no action will lie SREENATH HOLDAR *v* RAM SOONDUR CHUCKERBUTTY 4 W. R, S. C. C Ref, 4

128. ———— *Right of suit*— An under tenant who has saved the superior tenure from sale by depositing the amount of rent due, not only has the *security of the tenure which he preserves*, and of which he can obtain possession on application to the Collector, but he also has a right to recover the amount deposited by him as a loan in an ordinary suit. AMBIKA DEBI *v* PRANHARI DAS [4 B. L. R., F. B, 77

S C UMBIKA DEBIA *v* PRANHURER DOSS [13 W. R, F. B, 1

lation for the registration of any vendee or donee In 1860 *S sold the dar patni lease to K*, the deed of sale which was duly registered providing for mutation of names in the patnidars' books No such mutation was ever effected by *K*, who was never recognized as their tenant by *L* and *R*, the rent of the dar patni being paid in the name of *S* In 1864, the rent due from the patnidars being in arrear, the zamindar proceeded to sell the patni under Regulation VII

tect his

on 17th

the sale was ...

payment of his dar patni rent, claimed to set off the amount deposited in the Collectorate against the rent due *to L and R. This L and R refused to* allow, and they brought a suit in the Collector's Court against S and his sureties to recover the arrears of rent In that suit *K* intervened, claiming the benefit of the set off, to which however, the High Court, on 26th June 1866, on appeal, held that he was not entitled, the deposit being merely a voluntary payment by *K* On 30th October 1867 *K* brought a regular suit against *S* and *L* and *R* to recover the amount of the deposit, and obtained a decree, but the

in the Collectorate. LUCKHINARAIN MITTER *v.* KHETTRO PAL SINGH ROY [13 B. L. R, P. C., 146: 20 W. R, 380

Affirming the decision of the High Court in S. C. KHETTER PAUL SINGH *v* LUCKHEE NARAIN MITTER [15 W. R., 125

OKHOY COOMAR CHATTERJEE *v* DHIRAJ MAHTAB CHUND . 22 W. R., 289

130. ———— *Payment made*

dar patnidar cannot seek to deduct the amount from the rent due by him. LUKHEENARAIN MITTER *v.* SEETANATH GHOSE [1 Ind. Jur, N S, 317: 6 W. R, Act X, 8

131 ———— *Payment of patni rent by dar-patnidar—Beng Reg VIII of 1819, s 13*—In a suit by the purchaser of a patni against a dar-patnidar for arrears of rent of the year 1285 (1878), it appeared that, before the plaintiff's purchase the dar-patnidar had paid the amount of

to the end of 1284 NOBO GOPAL SIRCAR *v* SRINATH BUNDOPADHYA [I L R, 8 Calc, 877 11 C. L R, 37

132 ———— *Payment by dar-patnidar—Beng Reg VIII of 1819—Beng Act VIII of 1869, s 62*—The zamindar of an estate, in *which the plaintiff and defendant respectively had purchased* patni and dar patni tenures, obtained decrees for arrears of rent accruing before their purchases, though one of the decrees was obtained subsequently to defendant's purchase, and in execution of these decrees he advertised the patni for sale, and the amounts due were paid into Court by the defendant *to protect the tenure from sale* In a suit by the patnidar against the dar-patnidar for arrears of rent accruing due subsequently to the defendant's purchase,—*Held* that the defendant was on the construction of s 13 of Regulation VIII of 1819 and s 62, Bengal Act VIII of 1869 entitled to set off such payments against the plaintiff's claim *Nobogopal Sircar v Sreenath Bundopadhya, I. L R, 8 Calc, 877*, followed LALIT MOHUN SHAHA *v* SRINIBAS SEN I. L R, 13 Calc., 331

tenure under cl 4, s 13, Regulation VIII of 1819, and has come into possession of the tenure, and is entitled to the profits of it, is bound to give notice

SALE FOR ARREARS OF RENT —*continued.*

10. DEPOSIT TO STAY SALE—*continued.*

of his title to the raiyats. In the absence of such notice, he cannot recover from them rents already paid by them to the patnidar. NILMONEE ROY *v.* HILLS . . . . . 4 W. R., Act X, 38

134. ———————— *Payment by shikmidar—Money paid to preserve estate from sale.*—A shikmidar is not entitled to recover money voluntarily paid by him to preserve an estate from sale. POORNO CHUNDER DOSS CHOWDHRY *v.* SREENATH GOOPTO . . . . . 6 W. R., 173

135. ———————— *Right to contribution from co-sharers.*—A shareholder who pays up arrears of rent due from the whole of the tenure in order to save it from sale in execution is entitled to recover contribution from other shareholders who were in possession during the period within which the arrears accrued, even though the tenure should be in the name of another and the decree be nominally against such other alone. ASUDOOLLAH *v.* MONOHUR DOSS . . . 22 W. R., 531

136. ———————— *Compulsory payment—Right to recover.*—Plaintiff, to save the patni from sale for arrears of rent of a former year which had been adjudged by an apparently valid decree to be due to the defendant, paid the money. *Held* that the payment was made under such circumstances as entitled the plaintiff to recover back the money from the defendant. ANDREW *v.* LARMOUR . 2 Ind. Jur., O. S., 4 : 1 Hay, 309

137. ———————— *Suit to recover money paid—Beng. Reg. VIII of 1819, s. 13, cl. 3—Beng. Act VIII of 1865, s. 6.*—A patnidar, in execution of a decree for rent against his mirasidar, attached certain property of his, including a parcel of land belonging to the plaintiff, who, to save that portion, paid the whole amount due, and sued the mirasidar to recover the portion he ought to have paid. The suit was dismissed, no obligation on the plaintiff to pay having been shown. She appealed, alleging that her portion was within and subordinate to the holding of the mirasidar, and to sell would have jeopardized her holding. *Held* that the case was rightly remanded by the lower Appellate Court, but that the issue to be tried was whether the plaintiff was a party who came under the provisions of s. 6, Bengal Act VIII of 1865, read with s. 13, Regulation VIII of 1819, more particularly with cl. 3. LUCKHEE PRIA DEBIA *v.* BRINDABUN DEY [12 W. R., 313

138. ———————— *Suit to recover money paid.*—The plaintiff purchased an estate at an auction-sale in execution of a decree against the defendant, who was in possession, and after his purchase obtained possession on 6th April 1866. While he was in possession, one *R*, the patnidar, sued the defendant to recover arrears of rent which had become due. During the defendant's possession and before the plaintiff's purchase, and in execution of the decree he obtained in this suit, the estate in possession of the plaintiff was attached and ordered by the Collector to be sold; whereupon the plaintiff paid the amount of the decree to save the tenure from sale. In a suit brought to recover the amount,—*Held* that the payment by the plaintiff was, as far as the defendant was concerned, a voluntary payment. Mere inconvenience without risk of actual damage is not sufficient to take away the voluntary character of the payment. RAM BAKSH CHETLANGI *v.* HRIDOY MANI DEBI [8 B. L. R., 10 note : 10 W. R., 446

139. ———————— *Suit to recover money paid.*—A patni tenure which had been attached by *G* in execution of a decree against *D* was claimed by *S*, whose claim was allowed. Upon this *G* instituted a suit against *S* and others to have the patni declared to be the property of *D*, and, being successful, had the patni sold in execution of his decree against *D*, became the purchaser, and got possession. After this, he saved the estate from being sold for arrears of rent which had accrued prior to his purchase, by paying up the amount due. He subsequently sued *D* and *S* to recover the amount so paid. *S*, who had meantime appealed to the Privy Council, succeeded in obtaining a reversal of the decree under which *G* had sold the patni; but this reversal did not take place before *G* had instituted the suit for recovering the arrears he had liquidated. *Held* that *G* was entitled to recover from *S* the amount which had been paid by him to save the patni from being sold. GOPAL CHUNDER CHUCKERBUTTY *v.* UOODOY LALL DEY [10 W. R., 115

140. ———————— *Suit to recover money paid.*—The plaintiff purchased at an execution sale a share of *K*'s tenure which had been attached on account of a money-decree. Subsequently the whole tenure was advertised for sale in execution of a decree for arrears of rent. On applying to the Munsif, he was told that, if he deposited the whole amount due, the sale would be stayed. He did so and prevented the sale. He now sued *K* to recover the amount deposited. *Held* that the payment was neither officious nor voluntary, and that *K*, who had enjoyed the profits of the land, was equitably liable for the sum paid to save it from sale. KHETTUR MOHUN BANERJEE *v.* HARADHUN CHATTERJEE [19 W. R., 287

141. ———————— *Unconditional tender—Beng. Reg. VIII of 1819.*—KEMP, J.—A tender to stay a sale under Regulation VIII, 1819, must be of the whole of the zamindar's demand and without any condition as to its being kept in deposit by the Collector. RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . 17 W. R., 122

142. ———————— *Payment to zamindar—Beng. Reg. VIII of 1819, s. 13—Payment to stay final sale.*—The direction in s. 13 of the Regulation VIII of 1819, that money paid into Court by a talukhdar in order to stay the final sale shall be deducted from any claim of rent that may at the time be pending on account of the year or month

10 DEPOSIT TO STAY SALE—*concluded*

for which the notice of sale may have been published, is satisfied by payment, not into Court, but to the zamindar If a strictly literal construction were put upon the words "into Court," no payment effectual to stay the sale could be made, for "the Court" has nothing to do with these sales, which are managed by the Collector, TARINY DEBEE *v* SHAMA CHURN MITTER . I. L. R , 8 Calc , 954

143. ———— *Nature of payment—Loan to proprietor—Beng Act VIII of 1865, s 6* —Money deposited to protect from sale a tenure advertised under the provisions of Act VIII of 1865 must, under s 6, be considered as a loan made to the proprietor of the tenure, which becomes security to the depositor, who is entitled, on applying, to obtain immediate possession in order to recover the amount from any profits belonging to the tenure KARTICK SURMAH *v* BYDONATH SAHENEE [10 W. R., 205

144. ———— Position of person making payment—*Beng Reg VIII of 1819—Suit for share of patni estate—Mortgagee* —Plaintiff claimed an eight annas share of a patni as purchased by the official assignee of an insolvent, *D*, whom the Principal Sudder Ameen found to have been owner in his own right by inheritance of the share of the patni of which defendant's ancestor, *G*, having deposited arrears of rent, was in possession as giurdar under the provisions of Regulation VIII of 1819 *Held* that *G* was substantially in the same position as a mortgagee in possession under an usufructuary mortgage, and that plaintiff, as a purchaser from

from the usufruct of the tenure," even though this had not been "established in a suit instituted for the purpose" BOISTUB CHURN BHUDRO *v* TARA CHAND BANERJEE . . . 11 W R., 357

11 SETTING ASIDE SALE

(*a*) GENERAL CASES

145. ———— Civil Procedure Code (1882), s 310A—*Civil Procedure Code Amendment Act (V of 1894)—Bengal Tenancy Act (VIII of 1885), s. 174* —S. 310 A of the Code of Civil Procedure applies to the sale of a tenure in execution of a decree for its own arrears JANARDHAN GANGULI *v* KALI KRISTO THAKUR . I. L R , 23 Calc , 393

KRISHNADHAN NATH *v* DAMAYANTI DEVI [I. L R , 23 Calc , 396 note

BEHARY LAL SEAL *v* RUSSICK CHUNDER PAL [I L. R , 23 Calc., 396 note

BUNGSHIDHAR HALDAR *v.* KEDARNATH MONDAL [1 C. W N , 114

11. SETTING ASIDE SALE—*continued.*

146. ———— *Order under s 310, Civil Procedure Code, 1882—Notice to purchaser.*—An auction purchaser is entitled to a notice before an order is made under s 310A BUNGSHIDHAR HALDAR *v.* KEDARNATH MONDUL [1 C. W. N., 114

147. ———— S 310A of the Civil Procedure Code does not apply to sale under Act X of 1859, as the Code of Civil Procedure applies only up to the sale, and not after it HARISH CHANDRA GHOSE *v.* ANANTA CHARAN PATRA [2 C. W. N , 127

(*b*) IRREGULARITY.

148. ———— Beng Reg VIII of 1819, s 8, Application of—*Jungleburi tenures*—S 8, Regulation VIII of 1819, refers to jungleburi tenures that existed at that time, and its provisions do not apply to any tenure created since the passing of that Regulation. MONMOHUN SINGH *v.* WATSON & Co [2 Hay, 398

149 ———— Beng. Reg. VIII of 1819, s 8, Construction of—*Residing in neighbourhood —Attesting witnesses* —By the words "residing in the neighbourhood" in Reg. VIII of 1819, s 8, the Regulation does not make it imperative that the attesting witnesses shall be residents of the village, but may be taken to include men living within a short distance of the cutchery MOHINEE DOSSEE *v* JUGGODUMBA DOSSEE W. R , 1864, 382

150. ———— *Substantial*
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attested by three substantial persons,—*Held* that the word "substantial" must be understood in its ordinary sense,—*i e* men who have some stake in the community, men of local influence or importance and respectability,—and not be taken to mean simply men who can readily be found GOPAL KISHORE SHOOR *v.* MUDUN MOHUN HOLDAR [2 W. R , 188

MOHINEE DOSSEE *v* JUGGODUMBA DOSSEE [W. R , 1864, 382

151. ———— "*Substantial persons*"—*Service of notice* —The provisions of cl 2, s 8, Reg VIII of 1819, with regard to the notification of the sale of a patni talukh for the

of the notice having been brought and published on the spot," are merely directory, and where there is proof that the notice was in fact served, the sale will not be vitiated by non compliance with any of these provisions,—*e g.*, as where one of the witnesses attesting the service of the notice turns out not to be "substantial" A respectable man, of good character,

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

living and well known in the neighbourhood, may properly be considered a "substantial person" within the meaning of cl. 2, s 8 of the Regulation. It is too limited a construction of that clause to hold that the word "substantial" must be taken to mean a wealthy man from whom damages could be recovered by the patnidar, supposing the attestation to be false. RAMSABUCK BOSE *v.* KAMINEE KOOMAREE DOSSEE [14 B. L. R., 394

S. C. RAM SABUK BOSE *v.* MONMOHINEE DOSSEE [L. R., 2 I. A., 71 : 23 W. R., 113

152. ———— *Substantial persons—Suit to set aside sale for irregularity—Non-service of notices—Omission to tender rent.*—In a suit to set aside the sale of a patni for arrears of rent under Regulation VIII of 1819, on the ground that proper notices were not sent, served, and published under s. 8, cl. 2, the objection in order to succeed must be one of substance and not merely of form. The requirements of the Regulation as to the service of the istahar, and the signing of the receipt by substantial persons, may be held to have been substantially performed where the persons signing are such as are usually expected to attest such a document, persons who are treated with consideration, *e.g.*, ameens, mooktears, chowkidars. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . . . . . . 24 W. R., 129

153. ———— Service of notice of sale—*Beng. Reg. VIII of 1819, s. 8, cl. 2—Non-service of notice, Effect of, on sale.*—Where a Court finds that the notice prescribed in cl. 2, s. 8, Regulation VIII of 1819, has been duly served, it need not find whether the peon who served the notice complied with all the directions of the Regulation as to what should be done in verification of such service. Omission to comply with those directions does not vitiate a sale under the Regulation, provided notice is duly served. SONA BEEBEE *v.* LALL CHAND CHOWDHRY . . . . . 9 W. R., 242

154. ———— *Proof of service—Onus probandi—Evidence Act, s. 106.*—In a suit against a zamindar to reverse the sale of a patni tenure held under Regulation VIII of 1819, on the ground of non-service of notice, the onus of proving service lies on the defendant, according to the spirit of s. 106 of the Evidence Act. DOORGA CHURN SURMA CHOWDHRY *v.* NAJUNOODDEEN . 21 W. R., 397

155. ———— *Proof of service—Beng. Reg. VIII of 1819, s. 8, cl. 2—Publication.*—Although the provisions of s. 8, cl. 2, of Regulation VIII of 1819, specifying the manner in which proof should be given of service of notice of sale, are merely directory, it is nevertheless absolutely essential to the validity of a sale under the Regulation that the notice of such sale should be served in strict compliance with the directions given in the same clause and section of the Regulation. BHUGWAN CHUNDER DASS *v.* SUDDER ALLY [I. L. R., 4 Calc., 41 : 2 C. L. R., 357

156. ———— *Beng. Reg. VIII of 1819, s. 8, cl. 2—Proof of publication of notice before sale of patni talukh for arrears of rent.*—The due publication of the notices prescribed by Regulation VIII of 1819, s. 8, cl. 2, forms an essential part of the foundation on which the summary power to sell a patni talukh for non-payment of rent is exercised by the zamindar, who, when instituting this proceeding, is exclusively responsible for such publication being regularly conducted. Although objection to the form of the receipt, and the absence of the receipt itself, need not be regarded, if the fact of the due publication of the notices having been made is not matter of controversy (as held in *Sona Bibee* v. *Lalchand Choudhry, 9 W. R., 242*), yet where that fact was in doubt owing to the evidence of it not having been secured according to the provisions of the Regulation—a result due to the neglect of those representing the zamindar,—the finding of the High Court that due publication had not been established by such proofs as were forthcoming was maintained by the Judicial Committee. MAHARAJAH OF BURDWAN *v.* TARASUNDARI DEBI [I. L. R., 9 Calc., 619 : 13 C. L. R., 34 L. R., 10 I. A., 19

157. ———— *Proof of publication of notice—Beng. Reg. VIII of 1819, s. 8—Irregularity in sale—Suit to set aside sale.*—It is essential to the validity of a sale, held under Regulation VIII of 1819, of a patni estate for arrears of rent, that the notices of sale prescribed by cl. 2, s. 8 of the Regulation, should have been all duly and regularly published as therein directed. BAIKANTHA NATH SINGH *v.* DHIRAJ MAHATAB CHAND [9 B. L. R., 87 : 17 W. R., 447

HARANATH GUPTA *v.* JAGANNATH ROY CHOWDHRY . . 9 B. L. R., 89 note : 11 W. R., 87

And as to what amounts to publication of notice. RAGHAB CHANDRA BANERJEE *v.* BRAJANATH KUNDU CHOWDHRY [9 B. L. R., 91 note : 14 W. R., 489

158. ———— *Beng. Reg. VIII of 1819, s. 8, cl. 2—Formalities prescribed in that section for due publication of the notice of sale.*—In cases where the due publication of the sale notice is in controversy, it is incumbent upon the landlord to show that the formalities prescribed by s. 8 of Regulation VIII of 1819 have been complied with. *Maharajah of Burdwan* v. *Tarasundari Debi, I. L. R., 9 Calc., 619 : L. R., 10 I. A., 19,* and *Maharani of Burdwan* v. *Krishna Kamini Dasi, I. L. R., 14 Calc, 365 : L. R., 14 I. A., 20,* referred to. *Sona Beebee* v. *Lallchand Chowdhry, 9 W. R., 242,* explained. BEJOY CHAND MAHATAB *v.* AMRITA LAL MUKERJEE . I. L. R., 27 Calc., 308

159. ———— *Ground for setting aside sale—Non-service of notice.*—The fact of no notice having been served in the mofussil is sufficient ground for setting aside a sale for arrears of

SALE FOR ARREARS OF RENT —*continued*

11 SETTING ASIDE SALE—*continued*

rent NUGENDRO CHUNDER GHOSE *v* MUSRUFF BIBEE . 15 W. R., 17

TARA CHAND BISWAS *v* RAM JEEBUN MOOSTAFEE [22 W. R, 202

160 ———— *Beng Reg VIII of 1819, s 8—Notice of sale, Publication of*— In a case of a sale under Regulation VIII of 1819, where the patni was a small piece of land, upon which there was no town or village or cutchery of any kind, and the peon stuck up the notice in the Collector's office and also at the sudder cutchery of the zamindar, and obtained the receipt of the defaulter in the latter place, he was held to have carried out substantially, as far as he could, the *provisions of the law regarding notice* HURRY KRISTO ROY *v* MOTEE LALL NUNDER [14 W. R, 36

161. ———— *Beng Reg*
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in which the defendant's gomashta was transacting and did habitually transact business, than at the cutchery, which had not been in use. HUNOOMAN DOSS *alias* NONNAH BABOO *v* BIPRO CHURN ROY [20 W. R, 132

162 ———— *Beng Reg VIII of 1819 s 8*—In the case of a sale of a patni talukh for arrears of rent, so long as the cutchery at which notice on the defaulter, as required by Regulation VIII of 1819, s. 8 cl , is served, is an adjacent one in which all the business of the defaulting

DUREE 21 W R, 369

163. ———— *Beng Reg VIII of 1819, s 8—Due publication of notice of sale*—Where there is a cutchery upon the land of a defaulting]
Regulation
where there
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at the principal town or village within the t lukh. MAHARAJAH OF BURDWAN *v* KRISTO KAMINI DASI [I L R, 9 Calc, 931: 13 C L R., 427

land of the defaulting patnidar, meaning the land which is to be sold for arrears of rent, the copy or extract of such part of the notice of sale as may apply to the tenure in question must be published at

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

"mofussil" is opposed to the sudder cutchery of the zamindar, and refers to the subordinate estate, which is the subject of the sale-proceedings. Where a zamindar, selling the tenure of a defaulting patnidar under the Regulation, had caused to be stuck up the requisite petition and notice at the Collector's

nor had published it at any other place upon the land of the defaulter,—*Held* that the zamindar had not observed a substantial part of the prescribed process, and that this was for the defaulting patnidar "a sufficient plea" within the meaning of the Regulation MAHARANI OF BURDWAN *v* KRISHNA KAMINI DASI . . I L R, 14 Calc., 365

MAHARANI OF BURDWAN *v* MIRTUNJOY SINGH [L. R, 14 I. A, 13

See AHSANULLA KHAN BAHADOOR *v* HURRI CHURN MOZOOMDAR I. L R., 17 Calc., 474

164 ———— *Insufficient publication of notice—Suit for reversal of sale*—Where, in a suit to set aside a patni sale under Regulation VIII of 1819, it was proved that the notice of sale was first stuck up in the cutchery of the ijaradar (the mehal having been let out in ijara by the patnidar), and, on the refusal of the ijaradar's gomashta to give a receipt of service it was taken down, and subsequently personally served on the defaulting patnidar at his house, which was at some distance from the patni mehal,- *Held* that the object of the provisions in Regulation VIII of 1819 as to service of notice of sale is not only to give notice of sale to the defaulter, but also to the under tenants, and to advertise the sale on the spot for the information of intending purchasers, but though those provisions had not been strictly complied with, yet as the plaintiff (the patnidar) did not allege that in consequence of the defective publication there was

s 14 for setting aside the sale *Bykantha Nath Sing* v *Dhiraj Mahatab Chand Bahadur, 9 B L R, 67,* commented on and distinguished GOUREE LALL SINGH *v* JOODHISTEER HAJRAH [I L R, 1 Calc, 359. 25 W. R., 141

165. ———— *Publication of*

under the Regulation shall be stuck up in the cutchery of the zamindar, is not complied with by serving the notice upon the zamindar himself or his

SALE FOR ARREARS OF RENT *—continued.*

11. SETTING ASIDE SALE—*continued.*

agent. The object of the Regulation is to make known to the holders of under-tenures and raiyats and the residents of the place that the patni will be sold if the arrears are not paid off within the time specified, and if the notice is not stuck up in the cutcherry, as prescribed by the Regulation, there is such a material irregularity in the publication as will avoid the sale. GOBIND LALL SEAL *v.* CHAND HURRY MAITY . . . I. L. R., 9 Calc., 172

166. ——— *Beng. Reg. VIII of 1819, s. 8—Publication of proof of service—Suit to set aside sale.*—Compliance with the directions in Regulation VIII of 1819 as to service of notice is essential to the validity of a sale under that Regulation. Where there was evidence of service upon the defaulter personally, but not of service at his cutchery,—*Held* that this was not sufficient, and that the sale must be set aside. *Maharajah of Burdwan* v. *Tarasundari Debi, L. R., 10 I. A., 19 : I. L. R., 9 Calc., 619,* and *Maharajah of Burdwan* v. *Kristo Kamini Dasi, I. L. R., 9 Calc., 931,* followed. MAHOMED ZAMIR *v.* ABDOOL HAKIM . . . I. L. R., 12 Calc., 67

167. ——— *Patni tenure—Beng. Reg. VIII of 1819, s. 8, cl. 2, and s. 14—Date of publication of notice.*—The fact that the receipt of the notice of sale was dated the 15th of Bysack, and therefore did not show that the notice had been published at some time "previous to that day," so as to satisfy the provisions of s. 8, cl. 2, of Regulation VIII of 1819, was held not to be sufficient ground for setting aside the sale of a patni tenure for arrears of rent. There being nothing in the receipt to show the date on which the notice was published, no injury to the plaintiff having been proved, and it appearing that more than the time prescribed by the Regulation had elapsed before the sale actually took place, the Court refused to set aside the sale. It would not be a "sufficient plea" within the meaning of s. 14 that the receipt had been obtained, or the notification published, on, instead of previous to, the 15th of Bysack. MATUNGEE CHURN MITTER *v.* MOORRARY MOHUN GHOSE

[I. L. R., 1 Calc., 175 : 24 W. R., 453

168. ——— *Beng. Reg. VIII of 1819, s. 8—Benami purchase—Validity of sale.*—*A* and *B* were co-sharers of a patni which was sold for arrears of rent by the zamindar and purchased by *C*. In a suit by *A* against *B C*, and the zamindar, the plaintiff alleged (1) that no sufficient notice had been given, and (2) that *C* purchased benami for *B*. *Held*, on the question of notice, that once it was found that the notice had been posted up in the cutchery of the defaulter in accordance with cl. 2, s. 8, Regulation VIII of 1819, it was not essential to the validity of the sale that any other notice should have been given to the defaulters themselves, or that the service should have been verified in the manner directed by the section. *Held* also, the benami purchase having been proved, that the sale must be considered good as far as the zamindar was concerned, and therefore the suit as against him must be dismissed with costs; and that as against *B* the parties were in exactly the same position as before the sale, *B* being a constructive trustee for *A*. *Sona Beebee* v. *Lall Chand Chowdhry, 1 W. R., 242,* and *Koylash Chunder Banerjee* v. *Kali Prosunno Chowdhry, 16 W. R., 80,* cited and followed. JOTENDRO MOHUN TAGORE *v.* DEBENDRO MONEE . . 2 C. L. R., 419

169. ——— *Beng. Reg. VIII of 1819, cl. 3, ss. 8, 14—Patni sale—Notices, Publication of—Ostum sale.*—It is imperative that the notices referred to in cl. 3, s. 8 of Regulation VIII of 1819, be published previously to the 15th Kartick. Non-compliance with such direction is a "sufficient plea" within the meaning of s. 14 of the Regulation for reversal of a sale held thereunder. *Matungee Churn Mitter* v. *Moorrary Churn Ghose, I. L. R., 1 Calc., 175 : 24 W. R., 453,* dissented from. SURNOMOYI DEBIA *v.* GRISH CHUNDER MOITRA . . I. L. R., 18 Calc., 363

170. ——— *Beng. Reg. VIII of 1819, s. 8—Service and publication of notice of sale—Irregularities in preliminaries to sale—Petition for sale—Certificate of Munsif when service is sworn to before him—Form of notice of sale in mid-year sales for six months' arrears.*—All the requirements in cl. 2, s. 8 of Regulation VIII of 1819, must be imported into cl. 3 of that section *mutatis mutandis.* Where therefore the zamindar is proceeding under cl. 3 to obtain a mid-year sale for six months' arrears of rent, the service of notice of sale is a condition precedent to the sale being held. Such notice must show, as provided by that clause, that the sale may be prevented by payment of the whole of the balance due, or of three-fourths of such balance. In such a case a notice which stated that the sale would take place unless the whole of the balance was paid as if the zamindar was proceeding under cl. 2 for the whole year's arrears was held to be a bad notice, and a non-compliance with a substantial requirement of the Regulation such as to justify the reversal of the sale. The publication of the petition to the Collector containing a specification of the balance of rent due, by sticking it up in some conspicuous part of the cutchery as required by cl. 2, s. 8 of the Regulation, is not a substantial portion of the process to be observed by the zamindar previous to a sale for arrears of rent; non-compliance with that provision therefore is not a ground for setting aside the sale. For the same reason, the non-presentation of the petition on the precise day (1st Kartick) specified in cl. 3, s. 8, affords no ground for setting aside the sale. The presentation of the petition on the 2nd Kartick when the 1st was a Sunday was held to be a sufficient compliance with the section. The words "certificate to which effect" in the portion of cl. 2, s. 8, relating to the procedure in case of refusal by the village people to attest the publication of the notice of sale, mean a certificate to the effect

SALE FOR ARREARS OF RENT —*continued.*

11 SETTING ASIDE SALE—*continued.*

DAR I. L. R, 17 Calc, 474

Held by the Privy Council affirming this decision —The power of sale given to the zamindar by Regulation VIII of 1819, upon default in payment of the rent by a patnidar is only exercisable subject to a condition as to notice to the defaulter To bring into operation the provisions of cl 3 of s 8, relating to a mid year sale, the serving a notice, according to that section, intimating to the patnidar that payment of three fourths of the balance due *will prevent a sale,* is a *condition precedent* to the sale A notice relating to a mid year sale was *held*, to be essentially defective, as it followed cl 2 instead of cl. 3 of s 8, and intimated that payment of the whole arrears would be the only way to stay the sale. This objection was taken for the first time in the Appellate Court. *Held* that, as a defect fatal to the whole proceedings

DUR *v* HARICHARAN MOZUMDAR

[I L R, 20 Calc, 86
L. R., 19 I. A, 191

171 ———— *Beng Reg VIII of 1819, s 8—Notice, Publication of —Reasonable time—Construction of the section—Setting aside sale, Ground of*—The provision in s 8 of Regulation VIII of 1819 requiring the notice of sale to be published before the 15th Bysack applies to the notice to be published in the mufassal and not to the notice to be affixed at the Collectorate The words in the section "the same shall then be stuck up in some conspicuous part of the cutchery" do not mean that it must be stuck up either immediately or before the service of the other notices referred in the section or at least before the 15th of Bysack It

the sale NIAMAT ULLAH *v.* FORBES

[2 C. W. N, 461

172. ———— *Beng Reg VIII of 1819, s. 8, cl. 2—Onus of proof of publication of notice before sale of patni talukh for arrears of rent*—In a suit to set aside a sale of a patni talukh, held under the provisions of s 8 of Regulation VIII of 1819, on the ground that the notice required by sub-s 2 of that section had not been duly published, it lies upon the defendant to show that the sale was preceded by the notice required by that sub section, the service of which notice is an essential preliminary to the validity of the sale In such a suit, where there was no evidence one way or the other to show that the notice required by that

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[I. L. R., 19 Calc, 699

173. ———— *Beng Reg. VIII of 1819, ss 8, 14, cl. 2—Publication of notice in the Collector's cutchery—Non-publication of notice in manner prescribed, Effect of, on the validity of a sale of a patni tenure—"Sufficient plea'*—The sticking up or publication in a conspicuous part of the Collector's cutchery of a notice in accordance with the provisions of cl 2 of s 8 of Regulation VIII of 1819 is essential to the validity of a sale of a patni *tenure under that Regulation* Where a notice of sale, instead of being stuck up and published in some conspicuous part of the Collector's cutchery as required by law, was in accordance with the practice which prevailed during the incumbency of the Nazir of the Collector's cutchery at Birbhum and of his predecessors in office, kept by the Nazir with other petitions for sale and notices relating to them in a bundle, which was at night locked up for safe custody, and in the day time kept in a conspicuous place *near his seat at the entrance to the cutchery,* any person who chose to ask for it or wished to see it being at liberty to inspect the whole bundle,—*Held* [by PETHERAM, *C J*, and GHOSE, *J* (TOTTENHAM, J, dissenting)] that this was not a publication of the notice within the meaning of cl 2 of s 8 of the Regulation and that it was a 'sufficient plea' for the defaulting patnidars within the meaning of s 14 to have the sale set aside. *Maharaja of Burdwan* v *Tarasundari Debi, I L R, 9 Calc, 619 L R, 10 I A, 19,* relied on

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174. ———— *Act X of 1859 —Non-attachment and non publication of sale proclamation—Civil Procedure Code (Act XIV of 1852), s 311*—There is no provision in Act X of 1859 under which the sale of a jote in execution of a rent decree is liable to be set aside on the ground of non attachment and non-proof of publication of the sale proclamation PATIT SHAHU *v* HARI MAHANTI

[I. L. R., 27 Calc., 789

175. ———— *Sale after due and proper notice set aside as irregularly conducted —Second sale without fresh notice—Suit to set aside second sale—Madras Rent Recovery Act (Mad Act VIII of 1865), ss. 18, 39, and 40*—A landlord attached his tenant's holding for arrears

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

of rent in 1889, and within the time prescribed by the Madras Rent Recovery Act, s. 18, put in an application for sale to the Collector and otherwise complied with the procedure prescribed by the Act. The land was sold, but the sale was set aside as having been irregularly conducted. The landlord then made in 1891 an application to the Collector for a fresh sale (which was granted); a fresh sale took place without a fresh notice being given to the tenant under s. 39 of the intention to sell. The tenant now sued to have this sale set aside. *Held* that a fresh notice was not necessary, and that the plaintiff was not entitled to have the sale set aside. OLIVER *v.* ANANTHARAMAYYAR . . . **I. L. R., 20 Mad., 498**

(c) OTHER GROUNDS.

176. ——— **Unregistered proprietor's right to sue to set aside sale**—*Patni talukh—Transfer of patni—Registered transferee—Beng. Reg. VIII of 1819, s. 14.*—Where a patni talukh has been sold under the provisions of Regulation VIII of 1819, an unregistered shareholder therein is entitled to sue for a reversal of the sale under the provisions of s. 14 of the same Regulation. CHUNDER PERSHAD ROY *v.* SHUVADRA KUMARI SHAHEBA [**I. L. R., 12 Calc., 622**

177. ——— *Beng. Reg. VIII of 1819, ss. 3, 5, 6, 14—Sale of patni tenure—Registered patnidars—Suit by unregistered patnidars.*—An unregistered proprietor of a patni tenure is entitled to sue to set aside a sale held under Regulation VIII of 1819. *Chunder Pershad Roy* v. *Shuvadra Kumari Shaheba, I. L. R., 12 Calc., 622,* followed. JOYKRISHNA MUKHOPADHYA *v.* SARFANNESSA . . . . **I. L. R., 15 Calc., 345**

178. ——— **Fraud**—*Suit to set aside sale—Beng. Act VIII of 1865—Right of purchaser.*—A purchaser at a sale in execution of a decree held under Bengal Act VIII of 1865 could not be ousted *from the property purchased by him without proof* that the decree and sale were fraudulent, and that he (the purchaser) was a party to or had notice of the fraud. DAMUDAR ROY *v.* NIMANUND CHUCKERBUTTY [**7 B. L. R., Ap., 1: 15 W. R., 365**

179. ——— *Collusion—Suit by tenant against purchaser to set aside sale.*—Where a tenure had been sold under s. 105, Act X of 1859, in execution of a decree for the rent of land held under a mirasi pottah, a tenant in possession was at liberty to show that the decree had been obtained by fraud and collusion against a person who had then no interest in the premises. BORRADAILE *v.* GREGORY . . . **2 W. R., Act X, 63**

180. ——— *Beng. Reg. VIII of 1819—Invalid sale.*—A patni talukh being about to be brought to sale under Regulation VIII of 1819, the agent of the sharers were in attendance at the Collectorate on the day of sale, prepared to pay the rent due. Two of the agents (*T* and *B*) happening to be out of the way at the time, the lot was about to be called up. The third *K*, without informing the Collector or zamindar's agent of their intention to pay, or giving notice to the others, purchased the patni. *Held* that *K's* act was one of bad faith, and that the 4 annas shareholders whom he represented could not in equity be allowed to benefit by adopting the fraud. *Held* also that, as between the Collector and zamindar and the defaulting patnidars, the sale was valid; but that it was void so far as it created a title in favour of the 4 annas share holders to the 12 annas share, and *K* must be treated as having made the purchase on account of, and as a trustee for, the 12 annas shareholders. KOYLASH CHUNDER BANERJEE *v.* KALEE PROSUNNO CHOWDHRY . . . . . . **16 W. R., 80**

181. ——— *Collusion—Invalid sale—Reconveyance of share sold.*—Where the sale of a tenure for arrears of rent was brought about by collusion between the party in whose name it stood and the purchaser, with a view to get rid of a co-sharer, who had neglected to have his share transferred to his name,—*Held* that the transaction was a private one, and not really an auction sale for the purpose of realizing the zamindar's rent, and that on payment of his share of the rent the above sharer was entitled to have his share reconveyed to him. KISHORE CHUNDER SEIN *v.* KALLY KINKUR PAUL CHOWDHRY . . . . **20 W. R., 333**

See SHIBO SOONDUREE DOSSEE *v.* PANCHCOWREE CHUNDRA . . . . . **14 W. R., 158**

SIDHEE NUZUR ALLY KHAN *v.* OJOODHYARAM KHAN . . . **10 Moore's I. A., 540** [**5 W. R., P. C., 83**

182. ——— *Collusion—Beng. Reg. VIII of 1819—Sale where no arrears are due.*—*Per* AINSLIE, *J.*—It can only be on the ground that a sale is carried out in respect of arrears not really due that fraud and collusion can be imputed. RAM CHURN BUNDOPADHYA *v.* DROPO MOYEE DOSSEE . . . . . **17 W. R., 122**

183. ——— *Beng. Reg. VIII of 1819—Invalidity of sale—Sale where no arrears are due.*—A patni sale under Regulation VIII of 1819 is invalid if there was no arrear of rent at the date of sale, whether notice of the fact had been given to the Collector or not at the time of the sale. SHUROOP CHUNDER BHOOMICK *v.* PERTAB CHUNDER SINGH [**7 W. R., 219**

184. ——— **Sale after arrears have been paid**—*Suit to set aside sale—Deposit of rent in Collector's treasury.*—An estate was sold under cl. 2, s. 8, Regulation VIII of 1819, for arrears of rent due by a patnidar to the zamindar. Prior to the date of sale, the amount due was paid by the patnidar to an accountant in the Collector's Office, as in satisfaction of arrears, but no notice was given to the zamindar or Collector. A suit was afterwards brought to set aside the sale, on the ground that, in consequence of such payment, there were no arrears due at the time of sale. *Held per* NORMAN and MACPHERSON,

11 SETTING ASIDE SALE—*continued*

JJ, that the suit could not be maintained *Per* MITTER, *J* —If the custom of the Collectorate was, as alleged by the plaintiff, for payments in satisfac- accountant, the v MOHAN SHAHA

[8 B. L R, 134: 15 W. R., 560

185 ——— *Sale by zamindar with notice (though irregularly served) that arrears of rent have been deposited* —Where a zamindar puts up a patni for sale, under Regulation VIII of 1819, knowing that the rent due to him has been paid into Court by the patnidar, the sale is invalid, even if the notice served on the zamindar was illegally served TARA SOONDUREE DEBIA v RADHA SOONDUR ROY 24 W. R., 63

186 ——— Sale under decree alleged to be against wrong person—*Beng. Act VIII of 1865—Registered tenant* —The plaintiff purchased, on 28th of September 1866, the right title, and interest of one *H* in a certain tenure of which *G* was the registered tenant Previously the zamindar had brought a suit against *G* for arrears of rent of the tenure and obtained a decree, in execution of which

dant,—*Held* that the suit by the defendant was

as against the plaintiff FATIMA KHATUN v. COLLECTOR OF TIPPERAH

[8 B. L. R., 4 note: 13 W. R., 433

187 ——— Sale of an under tenure in execution of decree for arrears of rent—*Act VIII of 1865—Sale under three separate decrees each against one of three joint brothers—Execution issued only against one—Joint interest of three brothers in joint possession sold* —A zamindar brought to a judicial sale an under tenure in execution of three *ex parte* decrees obtained by him for arrears of rent thereof for different periods The property was held by three Hindu brothers in joint possession The zamindar purchased it at the sale At the instance of the zamindar, execution had been issued against only one of the brothers Another of them, referring to this, afterwards disputed the validity of the sale and claimed his one third share, alleging, as the fact was, that the decrees had not, each and all of them, been against each and all of the three brothers, and that the sale was invalid One at least of the three decrees was against the three brothers, who all understood that they were judgment-debtors under the decrees They had been served with proper notices under Act VIII of 1865, and separate attachments of the land under each decree, and separate proclamations of sale thereunder had been made *Held* that the sale was a valid one, and operated to transfer the tenure to the purchaser. TARA LAL SINGH v SAROBAR SINGH

[I L. R. 27 Calc, 407
L. R, 27 I. A, 33
4 C. W N., 533

188. ——— Decree for sale set aside on review—*Bonâ fide purchaser—Suit to set aside sale* —*A* purchased a share of *B*'s talukh at an auction-sale in execution of an *ex-parte* decree obtained against *B* under s 105 of Act X of 1859 *B* obtained leave under s 58 of Act X of 1859 to revive the suit, and succeeded in getting it dismissed. He now sued to set aside the sale to *A* *Held* that the sale to *A* was binding against *B*, notwithstanding that the decree in execution of which it had taken place had been set aside in review provided the sale was *bonâ fide*. JAN ALI v JAN ALI CHOWDHRY

[1 B L. R., A. C, 56: 10 W. R, 154

189. ——— Decree for sale set aside for fraud—*Suit to set aside sale* —In a suit to annul the sale of an under tenure in execution of a decree under Act X of 1859, which was subsequently set aside on the allegation that it had been obtained collusively and by fraud, it was found that neither the decree holder nor the purchaser was guilty of any fraud *Held* that the mere circumstance of the decree under which the sale had taken place having itself been set aside did not invalidate the sale, the plaintiff having failed to show that the purchaser was a party to the fraud which led to the decree and sale JUGUL KISHORE BANERJEE v ABHAYA CHARAN SARMA

[1 B. L R, A. C., 84

MOHESH CHUNDER BAGCHEE v DWARKANATH MOITRO 24 W. R, 260

190. ——— Sale while warrant is in

debtor is still in force, is not merely irregular, but void A suit will lie to set aside an auction sale for arrears of rent where the decree-holder himself be-

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[7 C L R., 215

191. ——— Want of material injury—*Beng. Reg. VIII of 1819* —A purchaser under a sale for arrears of rent is not entitled to have the purchase set aside on the ground merely of an irregularity in sticking up the preliminary advertisement, unless he can show that he has been prejudiced thereby JOYNUB BEBEE v AHAMED JAN

[Marsh, 31: 1 Hay, 63

192 ——— Want of notice of suit for arrears—*Suit to set aside sale* —No suit will lie

SALE FOR ARREARS OF RENT —*continued.*

11. SETTING ASIDE SALE—*continued.*

to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. DOORGA PERSHAD PAL CHOWDHRY *v.* JOGESH PROKASH GONGOPADHYA . . . **4 W. R., Act X, 38**

193. ———— **Want of notice of sale**—*Bonâ fide purchaser.*—If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819, the sale is informal and can be set aside notwithstanding the *bonâ fides* of the purchaser. MOBARUCK ALI *v.* AMEER ALI . . **21 W. R., 252**

194. ———— *Unregistered tenant—Purchaser—Suit to set aside sale.*—The purchaser of a tenure which is liable to be sold under Regulation VIII of 1819, who has not registered his name as tenant, is not entitled on a sale of the tenure to notice of sale, and a suit brought by him for reversal of the sale on that ground was dismissed. DHUNPUT SINGH ROY *v.* VILLAYET ALI

[13 B. L. R., 153 note: 15 W. R., 211

Also BHOBO TARINEE DOSSEE *v.* PROSONNOMOYE DOSSEE . . . **13 B. L. R., 150 note**

GOSSAIN MUNGUL DOSS *v.* ROY DHUNPUT SINGH

[25 W. R., 152

195. ———— *Beng. Reg. VIII of 1819, s. 14—Patni sale—Se-patni interest—Onus of proof as to requirements of Reg. VIII of 1819.*—Certain patnidars having defaulted, their patni right was put up for sale by the zamindar under Bengal Regulation VIII of 1819, and purchased by the defendants. The plaintiffs, being se-patnidars of a portion of the lands let out in patni, were, after the sale, dispossessed by the defendants. The se-patnidars brought a suit against the defendants asking for possession of the mouzahs forming their se-patni, alleging that the notification of sale had not been duly served, and that the proceedings taken by the zamindar were bad, as they were taken in the name of the last deceased holder of the patni. The zamindar was made a party to the suit, but no relief was asked against him. *Held* that, notwithstanding that the plaint questioned the validity of the sale, the suit was not one under s. 14 of the Regulation, no relief being claimed against the zamindar, and that the plaintiffs' only remedy was a suit under s. 14 of the Regulation to set aside the sale of the entire patni. SURESH CHANDRA MUKHOPADHYA *v.* AKKORI SING . . **I. L. R., 20 Calc., 746**

196. ———— **Vagueness of specification and notice of sale**—*Act X of 1859, s. 104.*—Want of clearness in the specification of the arrears and costs for which a sale takes place, or in the mode in which the notice is published, is not an irregularity vitiating a sale for arrears of rent if fraud is absent. MAHOMED AYENOODDEEN *v.* KALEE DOSS CHUNDO

[15 W. R., 279

197. ———— **Absence of one shareholder's name from proceedings**—*Irregularity affecting validity of sale.*—Where a tenure was duly sold for arrears of rent under Act X of 1859 and Bengal Act VIII of 1865, the absence of a shareholder's name from the proceedings did not, as a matter of law invalidate the sale as against him. DOORBIJOY MAHTOON *v.* PRITHEE NARAIN SINGH

[14 W. R., 30

198. ———— **Fixing date of sale**—*Era—Custom—Uniformity of practice.*—As regards the date fixed for sale and the era to be followed, the intention of the Regulation was to lay down a uniform practice in each locality. Uniformity being the essential requirement, and the particular date only the form of enforcing regularity, a practice which has been established for a course of years and which is reasonable and convenient in itself is not liable to objection on a mere point of form. PITAMBER PANDA *v.* DAMOODUR DOSS. DASSEE *v.* PITAMBUR PANDA . . . **24 W. R., 129**

199. ———— *Era—Error in advertisement of date.*—According to Regulation VIII of 1819, the sale of a patni tenure for arrears of rent must take place on a day in the Bengali month of Jeyt. When a sale was advertised to take place on the 5th Jeyt 1269, which date was erroneously stated in the sale notice to correspond with Saturday, May 17th, 1862, whereas the 5th Jeyt was in fact Sunday, May 18th, and the sale took place on Saturday, the 4th Jeyt, the sale was held to be illegal, in consequence of its not having taken place on the 5th Jeyt, or any subsequent date to which it might have been adjourned after due notice. BECHARAM MOOKERJEE *v.* ISSUR CHUNDER MOOKERJEE . . . . . . **W. R., 1864, 4**

200. ———— **Change of date of sale**—*Sale not for full arrears—Fraud—Suit to set aside sale.*—In a suit to set aside a sale for arrears of rent due up to Aughran 1262, the plaintiff, who claimed under a deed of conditional sale, was held not entitled to a decree on the following grounds. The change of date of sale from a holiday to the next advertised public sale day was not in this case such a postponement of the sale as to require any new distinct notification. A sale is not invalid because it is not for the full complete arrears due at the end of the year; it may take place at the end of the year for such arrears as may then be existing. No fraud or collusion was proved to justify the sale being set aside. FORBES *v.* PROTAP SINGH DOOGUR

[7 W. R., 409

201. ———— **Postponement of sale**—*Discretion of Court.*—A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, *i.e.*, that it will put him in a position to satisfy the demand, or when an immediate sale would be likely to entail injury to him, while a postponement would cause no serious prejudice to the decree-holder. JANOKEENATH MOOKERJEE *v.* RADHA MOHUN CHATTERJEE . . **20 W. R., 130**

SALE FOR ARREARS OF RENT
—continued

11 SETTING ASIDE SALE—*concluded*

202 ———— *Mad Act VIII of 1865 (Rent Recovery Act) s 33—Adjournment for want of bidders to next day—Duty of officer conducting sale*—A sale of land for arrears of rent under the provis ons of the Rent Recovery Act

sell *Held* that the sale was invalid PALANI v SIVALINGA I L R., 8 Mad, 6

203 ———— Inadequacy of price—*Ground for setting aside sale*—Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the patni law MUNGAZEE CHAPRASSEE v SHIBO SOONDUREE 21 W R, 369

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whenever it may be found that there has been an irregularity in publishing the sale processes wholly irrespective of *the question whether such irregularity* was caused by his acts or omissions RAMCHUNDER SURMAH CHUCKERBUTTY v KALEE CHUNDER SINGH [7 W R, 307

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which might not strictly be recoverable under the *Regulation where the zamindar in his petition clearly* distinguished the amount due for rent from such charges PITAMBER PANDA v DAMOODUR DOSS DASSEE v PITAMBER PANDA 24 W R, 129

12 EFFECT OF SETTING ASIDE SALE

sale of a patni tenure where a purchaser is made a co defendant under s 14 Regulation VIII of 1819 and it is decreed that the purchaser may recover the purchase money from the zamindar defendant —*Held* that the purchaser may proceed in execution without a fresh suit If the purchase money of a patni is in deposit in the Collectorate and the zamindar judgment debtor fails to assist the judgment creditor in recovering his dues he is liable for interest on the entire sum PREOLALL GOSSAIN v GYAN TURUNGINEE DOSSIA 13 W R, 161

207 ———— *Sale where no patni tenure exists*—*Held* by JACKSON J (MOOKERJEE J *dubitante*) that a zamindar who puts up for sale a patni under Regulation VIII of 1819 guarantees to the purchaser that there are some lands appertaining to the patni and if it turns out that there are no such lands (that there is in fact no such patni) the purchaser will be entitled to recover his

SALE FOR ARREARS OF RENT
—continued

12 EFFECT OF SETTING ASIDE SALE
—continued

purchase money KHELUT CHUNDER GHOSE v KISHEN GOBIND DEB 16 W R, 128

208 ———— Refund of bonus paid to purchaser on his purchase—*Lease Construc*

sale for arrears of rent under Regulation VIII of 1819 granted a dar patni lease to the plaintiffs (the former dar patnidars) and received a bonus of R1 199 The auction sale being five years afterwards set aside —*Held* that the plaintiffs were entitled to a refund of the bonus although they had not been dispossessed but had simply reverted to their former position as darpatnidars under the former patnidar TARACHAND BISWAS v RAM GOBIND CHOWDHRY [I L R., 4 Calc., 778 4 C L R, 20

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of all payments of rent which he may have made, and if he does not do so he cannot set up his loss in answer to a liability which he has incurred TARA CHAND BISWAS v NAFAR ALI BISWAS [1 C L R, 236

210 ———— Position of holder of chahar patni—*Sale—Under tenure—Pur*

superior tenure on which his own was dependent is upon such sale being set aside remitted to his previous position and is entitled to recover possession of the land comprised in his chahar patni from the purchaser or any assignee of the purchaser at such sale and he can do so notwithstanding that he him*self took a dar patni including the land he had held* as chahar patnidar from the purchaser at such sale and that this dar patni was afterwards sold in execution of a decree against himself and purchased at such last mentioned sale by the person whom he seeks to evict on the strength of his original title SREENARAIN BAGCHEE v SMITH [I L R, 4 Calc, 807 4 C L R., 148

211 ———— Order for refund of purchase money—*Beng Reg VIII of 1819—Notice of sale—Setting aside sale Refund of purchase money*—If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819 the sale is informal and can be set aside notwithstanding the *bonâ fides* of the purchaser Where such a sale was so set aside and the lower Appellate Court refused to make an order for refund of the purchase money the High Court in special appeal, and with reference to s 14, cl 1 of the

SALE FOR ARREARS OF RENT *—continued.*

11. SETTING ASIDE SALE—*continued.*

to set aside the sale of an estate in execution of a decree for arrears of rent at enhanced rates according to a prior decree for enhancement subsequently reversed on special appeal, on the ground of want of notice of the suit for arrears of rent. DOORGA PERSHAD PAL CHOWDHRY *v.* JOGESH PROKASH GONGOPADHYA . . . **4 W. R., Act X, 38**

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[13 B. L. R., 153 note: 15 W. R., 211

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[14 W. R., 30

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[7 W. R., 409

201. ———— **Postponement of sale**—*Discretion of Court.*—A sale in execution of a decree under Bengal Act VIII of 1869 can be postponed at the discretion of the Court only when the postponement is shown to promise benefit to the judgment-debtor, *i.e.*, that it will put him in a position to satisfy the demand, or when an immediate sale would be likely to entail injury to him, while a postponement would cause no serious prejudice to the decree-holder. JANOKEENATH MOOKERJEE *v.* RADHA MOHUN CHATTERJEE . **20 W. R., 130**

SALE FOR ARREARS OF RENT
—*continued*

11 SETTING ASIDE SALE—*concluded*

202 ——————— *Mad Act VIII of 1865 (Rent Recovery Act) s 33—Adjournment for want of bidders to next day—Duty of officer conducting sale* —A sale of land for arrears of rent under the provisions of the Rent Recovery Act

sell *Held* that the sale was invalid PALANI *v* SIVALINGA I L R, 8 Mad, 6

203 ——— Inadequacy of price—*Ground for setting aside sale* —Inadequacy of price is no ground for setting aside a sale regularly held for arrears of rent under the patni law MUNGAZEE CHAPRASSEE *v* SHIBO SOONDUREE 21 W R, 369

204 ——— Irregularity not caused by act or omission of decree holder—*Act X of 1859 s 104—Damages*—S 104 Act X of 1859 does not enact that the decree holder is to pay damages whenever it may be found that there has been an

[7 W R, 307

205 ——— Omission to tender before sale—*Inclusion of irrecoverable charges* —Where there is no tender before sale of the amount of rent due a sale under Regulation VIII of 1819 cannot be set aside merely because some charges were included which might not strictly be recoverable under the Regulation where the zamindar in his petition clearly distinguished the amount due for rent from such charges PITAMBER PANDA *v* DAMOODUR DOSS DASSEE *v* PITAMBER PANDA 24 W R, 129

12 EFFECT OF SETTING ASIDE SALE

206 ——— Recovery of purchase money —*Decree for purchase money—Execution—Fresh suit—Interest on deposit* —In a suit to set aside the sale of a patni tenure where a purchaser is made a

in recovering his dues he is liable for interest on the entire sum PREOLALL GOSSAIN *v* GYAN TURUNGINEE DOSSIA 13 W R, 161

207 ——————— *Sale where no patni tenure exists* —*Held* by JACKSON J (MOOKERJEE J *dub tante*) that a zamindar who puts up for sale a patni under Regulation VIII of 1819 guarantees to the purchaser that there are some lands appertaining to the patni and if it turns out that there are no such lands (that there is in fact no such patni) the purchaser will be entitled to recover his

SALE FOR ARREARS OF RENT
—*continued*

12 EFFECT OF SETTING ASIDE SALE
—*continued*

purchase money KHELUT CHUNDER GHOSE *v* KISHEN GOBIND DEB 16 W R, 128

208 ——— Refund of bonus paid to purchaser on his purchase—*Lease Construction of—Landlord and tenant—Failure of consideration—Sale subsequently set aside* —The defendants after purchasing a patni talukh at an auction sale for arrears of rent under Regulation VIII of 1819 granted a dar patni lease to the plaintiffs (the former dar patnidars) and received a bonus of R1 199 The auction sale being five years afterwards set aside —*Held* that the plaintiffs were entitled to a refund of the bonus although they had not been dispossessed but had simply reverted to their former position *as darpatnidars under the* former patnidar TARACHAND BISWAS *v* RAM GOBIND CHOWDHRY

[I L R, 4 Calc, 778 4 C L R, 20

209 ——— Indemnification for payments of rent while sale existed—*Beng Reg VIII of 1819 s 14 cl 1* —Where a zamindar sells a patni tenure for arrears of rent and the sale is afterwards set aside the purchaser can under Regulation VIII of 1819 s 14 cl 1 require the Court to compel the zamindar to indemnify him on account of all payments of rent which he may have made, and if he *does not do so he cannot set up* his loss in answer to a liability which he has incurred TARACHAND BISWAS *v* NAFAR ALI BISWAS

[1 C L R, 236

210 ——— Position of holder of chahar patni—*Sale—Under tenure—Purchaser Liability of* —The holder of a chahar patni or other subordinate tenure whose tenure has been brought to an end by the sale for arrears of rent of a superior tenure on which his own was dependent is upon such sale being set aside remitted to his previous position and is entitled to recover possession of the land comprised in his chahar patni from the

tion of a decree against himself and purchased at *such last mentioned sale by the* person whom he seeks to evict on the strength of his original title SREENARAIN BAGCHEE *v* SMITH

[I L R, 4 Calc, 807 4 C L R, 148

211 ——— Order for refund of purchase money—*Beng Reg VIII of 1819—Notice of sale—Setting aside sale—Refund of purchase-money* —If a patni is sold for arrears of rent without the notice required by Regulation VIII of 1819 the sale is informal and *can be set aside not* withstanding the *bona fides* of the purchaser Where such a sale was so set aside and the lower Appellate Court refused to make an order for refund of the purchase money the High Court in special appeal and with reference to s 14 cl 1, of the

SALE FOR ARREARS OF RENT —*concluded.*

12. EFFECT OF SETTING ASIDE SALE —*concluded.*

Regulation, declared the purchaser entitled to a refund with interest. MOBARUCK ALI *v.* AMEER ALI . . . . . . 21 W. R., 252

212. ———— **Rights of auction-purchaser on sale being set aside**—*Interest on purchase-money—Beng. Reg. VIII of 1819, s. 14.*—Under s. 14 of Regulation VIII of 1819, when a patni sale is set aside, the auction-purchaser is entitled to get back the purchase-money with interest. BEJOY CHAND MAHATAB *v.* AMRITA LAL MUKERJEE . . I. L. R., 27 Calc., 308

SALE FOR ARREARS OF REVENUE.

Col.

1. RIGHT TO SELL 8140
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See BOMBAY LAND REVENUE ACT, s. 56.
[I. L. R., 15 Bom., 67

See CASES UNDER MADRAS REVENUE RECOVERY ACT.

See RIGHT OF SUIT—REVENUE, SALE FOR ARREARS OF.

———— **Suit to set aside**—

See CO-SHARERS—SUIT BY CO-SHARERS WITH RESPECT TO THE JOINT PROPERTY —POSSESSION . 7 B. L. R., Ap., 42

See PARTITION—MISCELLANEOUS CASES.
[5 B. L. R., 135

SALE FOR ARREARS OF REVENUE —*continued.*

1. RIGHT TO SELL.

1. ———— **Right of Government.**—Whenever the land revenue is in arrear, Government is entitled to sell the land and to realize its due, whoever is the defaulter. BALKRISHNA VASUDEV *v.* MADHAVRAV NARAYAN
[I. L. R., 5 Bom., 73

2. ———— *Arrears—Beng. Regs. XIV of 1793 and VII of 1799—Beng. Reg. V of 1812.*—By Regulations XIV of 1793 and VII of 1799 the Governor General in Council may order a sale for arrears of a monthly instalment of revenue before the close of the year: but in order to warrant that Act, there must be an arrear of a previous year or of a monthly instalment. The existence of a written engagement or kistbandi is not a condition precedent to the right to enforce the payment of the revenue by monthly instalments, provided the monthly instalments be fixed and determined. By Regulation V of 1812, if there be an arrear of the annual assessment, or of a fixed monthly kist or instalment of that assessment, unpaid on the first day of the following month, the Governor General in Council may order a sale, and the Board of Revenue may direct the whole estate of the defaulting zamindar to be sold. When the monthly instalments are fixed and determined, the Government does not forego the right of selling the zamindari on default being made in payment of these instalments, by taking a bond from sureties by which the estates of the sureties also were rendered liable for the payment. KIRT CHUNDER ROY *v.* GOVERNMENT
[5 W. R., P. C., 41 : 1 Moore's I. A., 383

2. PROTECTED TENURES.

3. ———— **Act XI of 1859, s. 37**—*Power of purchaser to avoid incumbrances—Right of occupancy.*—The title of a purchaser at a sale for arrears of Government revenue, to void an under-tenure and eject the tenant, will depend upon whether the tenure is protected under any of the clauses of s. 37 of Act XI of 1859, and whether the tenant has a right of occupancy. If the tenant can prove such a right, he cannot be objected under s. 37. SHEO PURSHUN SINGH *v.* RAJENDRO KISHORE SINGH . . . 12 W. R., 123

4. ———— *Right of transferee of purchaser at sale for arrears of revenue*—The rights which are conferred upon a purchaser at a sale for arrears of revenue under Act XI of 1859, s. 37, are capable of being transferred to another person, if the transfer follows immediately upon the sale or within a reasonable time thereafter. KOYLASH CHUNDER DUTT *v.* JUBUR ALI . 22 W. R., 29

5. ———— *Right of purchaser to avoid under-tenure.*—When a patni granted by a Hindu widow, though in appearance a duly registered tenure falling within the 3rd exception of s. 37, Act XI of 1859, was in reality a fraud which the owner or reversioner might have avoided,

SALE FOR ARREARS OF REVENUE —*continued.*

2 PROTECTED TENURES—*continued.*

ses the right of RAM CHUNDER ITRO

[W R., 1864, 66

6. ——— *Suit by purchaser to avoid under tenure—Beng Act VIII of 1865, s. 16—Resident and hereditary cultivator.*—A certain chur having been converted into two estates paying Government revenue, the plaintiffs became the purchasers of one of these estates at a sale for arrears of revenue and of a howla lease of the other at an auction sale for arrears of rent, and

nature of their holdings, but claimed exemption from eviction on the ground that their ancestor, more than twelve years before, had cleared and cultivated the land and built a house thereon, and that since his death they themselves had continued to cultivate the land and reside upon it The lower Courts having found that the defendants were hereditary and resident cultivators, it was held that the defendants were entitled to the benefit of the proviso in

nation MAHOMED ASSANOOLLAH CHOWDHRY v SHANSHIR ALI . 4 C L. R., 165

7. ——— *Garden and home stead land with tanks*—Where a party had occupied land for about forty years under a howla lease, and had made tanks, gardens, and homesteads, he was held to be protected under Act XI of 1859, s. 37 GRISH CHUNDER BANERJEE v GUNGA DOORGA

[25 W. R, 60

8. ——— *Protection from effect of sale—Land planted as garden*—A landlord cannot by planting a garden in any portion of his estate, become, *quoad* such plantation, his own raiyat, so as to bring the land so planted under the protection of Act XI of 1859, s 37, in the event of his estate being sold for arrears of revenue. BOOL CHAND JHA v LUTHOO MOODEE 23 W. R., 387

9. ——— *Garden land—Under-tenure—Avoidance of tenure*—Leases of lands which may not have been expressly leased for on, but on n made, are, s 37, cl 4, auction purchaser GOBIND CHUNDRA SEN v JOY CHUNDRA DASS . . I. L. R., 12 Calc., 327

10. ——— *Permanent structures and improvements—Suit to avoid incumbrances*—In a suit to avoid an under tenure by the purchasers at an auction sale for arrears of Government revenue, the defendants contended that the tenure was created prior to the permanent settlement, and that some portion of the lands comprised in it were covered with permanent structures and improvements, and that accordingly it was protected under exceptions 1 and 4 to s 37 of Act XI of 1859, but the lower Court gave a decree to the plaintiffs and annulled the under tenure *Held* by WHITE, J, that, notwithstanding a party may fail to show that his tenure was created prior to the permanent settlement, yet he is entitled to the benefit of the 4th exception in respect of any permanent structures that may be upon his holding BHAGO BIBEE v RAM KANT ROY CHOWDRY

[I. L. R, 3 Calc., 293

11. ——— *Under tenure-holders—Raiyats, Rights of—Improvements on land*—A person holding land which is not protected from the operation of s 37 of Act XI of 1859 by any of the first three exceptions is yet entitled to the benefit of the 4th exception in respect of any of the items mentioned therein which may have been established on the land, and there is nothing in the words of the exception confining the benefit of it to tenure or under tenure holders, and excluding the raiyats from it *Bhago Bibee* v *Ramkant Roy Chowdhry, I L R, 3 Calc, 293,* followed The benefit of the 4th exception to s 37 Act XI of 1859, must be limited to improvements effected *bonâ fide* and to permanent buildings erected before the revenue sales, and should not be conceded to anything subsequently constructed, or which appears to have been

some previous occupier AJGUR ALI v ASMUT ALI

[I L. R, 8 Calc, 110 : 10 C L. R, 87

12. ——— *Lease of tank without surrounding land*—A lease of tank without any portion of the surrounding land is not protected under cl 4, s 37 of Act XI of 1859, as it is not, within the meaning of that clause, a lease of land whereon a tank has been excavated *Ajgur Ali* v *Asmut Ali, I L R, 8 Calc. 110,* referred to ASMAT ALI v HASMAT KHAN 2 C W. N, 412

13 ——— *Ejectment—Dwelling house, tanks, and trees*—The plaintiffs, purchasers at a revenue sale, sought to eject the defendant from a piece of land measuring a little over one bigha The defendant pleaded that he had his dwelling houses, tank, and trees on the holding It was found that the dwelling-houses consisted of certain huts, and that the so called tank was some two or three cubits in extent. As to the trees, there was no finding that there was anything in the shape of a plantation or garden *Held* that a dwelling-house, to be exempted under s 37 of Act XI of 1859,

exemption of any portion of the land MAKAR ALI v SHYAMA CHARAN DAS . 3 C. W. N, 212

SALE FOR ARREARS OF REVENUE —*continued.*

2. PROTECTED TENURES—*concluded.*

14. ——————— s. 52—*Plantation.*—The plaintiff was the purchaser at a sale under Act XI of 1859 by the Collector of the 24-Pergunnahs for arrears of revenue, of an estate in the Sunderbunds in which the defendant was holder of a mokurari maurasi jungleburi tenure, under which he was to clear away the jungle and then to cultivate the land with paddy. In a suit after notice to quit to eject the defendant, and obtain possession of the land, or to have the defendant's tenure annulled,—*Held* that the defendant's tenure was not protected as being one of "lands whereon plantations have been made" within the meaning of s. 52 of Act XI of 1859. BHOLANATH BANDYOPADHYA *v.* UMACHURN BANDYOPADHYA. UMACHURN BANDYOPADHYA *v.* BHOLANATH BANDYOPADHYA [I. L. R., 14 Calc., 440

3. SALE OF SHARE OF ESTATE.

15. ——————— **Separation of estate**—*Act XI of 1859, ss. 10, 11, and 37—"Shares" of an estate.*—The portion of an estate for which a separate account is opened under ss. 10 and 11 of Act XI of 1859, and the portion from which it is separated, are equally "shares" within the meaning of s. 10. The latter (though it may for convenience's sake be termed the parent estate) cannot be considered an entire estate within the meaning of s. 37, but is still a share and liable to all the incidents of a share. MONOHUR MOOKERJEE *v.* HUROMOHUN MOOKERJEE [1 W. R., 27

16. ——————— *Act XI of 1859, s. 13—Application for separate account without order of Collector.*—S. 13, Act XI of 1859, does not say that when an application has been made for a separate account, but when a Collector shall have ordered a separate account, that he is to put up to sale only the share in respect of which an arrear of revenue may be due. An order setting aside the sale as to the plaintiff's share therefore reversed on appeal. RAJENDRO KISHORE NARAIN SINGH *v.* DOORGA KOONWAR . . . 7 W. R., 154

17. ——————— *Act XI of 1859, s. 11—Share of estate.*—A sharer of a joint talukh, whose share consists of a specific portion of land, can obtain protection from a sale for arrears of revenue only under s. 11, Act XI of 1859, non-registry of the talukh as a shikmi talukh under that Act will not preclude any person thinking himself wronged by such registry from suing for the cancelment of the same. GOUR CHUNDER GOOPTO *v.* TARA MONEE . . . . 6 W. R., 217

18. ——————— *Act XI of 1859, s. 11—Separation of shares.*—The proprietors of a certain lot having obtained a separation of their shares under s. 11 of Act XI of 1859, there remained one share (comprising one village and one-third of three other villages) which was sold for arrears of revenue, and purchased by *W.* Of this share *W* sold one village to *P*, who agreed to pay a certain

SALE FOR ARREARS OF REVENUE —*continued.*

3. SALE OF SHARE OF ESTATE—*concluded.*

sum as his share of the Government jumma, and then applied to the Collector to open a separate account at the rate which had been agreed upon. The shareholders having objected, the Collector referred the parties to the Civil Court under s. 12. *P* then brought a suit in the Civil Court for a separate account. *Held* that there was no legal objection to plaintiff having his separate share opened at the rate he mentioned, even if the jumma on the share which remained in *W*'s possession was excessive; for if the whole estate were put up to sale for arrears on account of that remaining share, the other shareholders could always protect themselves by paying the sum due. POORNO CHUNDER BANERJEE *v.* RAM KANAYE GHOSE . . . 12 W. R., 243

19. ——————— *Act XI of 1859, ss. 10, 11, and 13—Separation of shares—Suit by purchaser at private sale for possession of specific share.*—The proprietors of a joint mehal, the jumma of which had been partitioned under s. 10, Act XI of 1859, were in possession of specific shares under a private arrangement among themselves, but had not obtained separation of shares under s. 11. One of the proprietors sold his share to the plaintiff, and the shares of two other proprietors who made default in payment of the revenue were sold under s. 13, Act XI of 1859, and purchased by the defendants. In a suit for exclusive possession of the share purchased by the plaintiff,—*Held* that the defendants acquired by their purchase an interest in the property as an undivided estate, and the plaintiff was not entitled as against them to have exclusive possession of any specific share. GUNGADEEN MISSER *v.* KHEEROO MUNDUL . 14 B. L. R., 170: 22 W. R., 449

4. INCUMBRANCES.

(*a*) GENERALLY.

20. ——————— **Limit of power to avoid incumbrances**—*Act XI of 1859, s. 11—Purchaser of entire estate.*—The power of a purchaser at a revenue sale to annul all incumbrances is limited to purchasers of entire estates. KALIDASS GHOSE *v.* CHANDRA MOHINI DASSI 8 W. R., 68

MADHUB CHUNDER CHOWDHRY *v.* PROMOTHONATH ROY . . . . 20 W. R., 264

(*b*) ACT I OF 1845.

21. ——————— **Object of act**—*Fraudulent purchaser—Sale by mortgagee.*—Act I of 1845 was not designed to protect a fraudulent purchaser as to the question whether a plaintiff could in point of law insist, notwithstanding an auction-sale for arrears of revenue, that as against him the sale ought to be viewed as a private sale. *Held* that, under the circumstances,—a fraudulent devise to bring about the same being alleged,—the sale must be considered a private sale. The exception that a fraudulent purchaser at an auction-sale by a mortgagee will not

ALE FOR ARREARS OF REVENUE *—continued*

4 INCUMBRANCES—*continued*

efeat the equity of redemption is an exception to ie rule that a sale for arrears of revenue gives a tle against all the world SIDHEE NUZUR ALLY HAN v OJOODHYARAM KHAN
[10 Moore's I A, 540 5 W. R, P C, 83

22 ———— **Right to avoid incum**rances—*Right of purchaser —Quære*—Whether he auction purchaser under Act I of 1845, at a sale or arrears of revenue, was entitled to take free of all ncumbrances created by the defaulting proprietor IUGGODESHURY DOSSIA v UMACHURN ROY
[7 W R, 237

23 ———— *Right of auction-purchaser—Act I of 1845, s 26*—An auction-purchaser of a zamindari at a sale for arrears of revenue is not entitled, under s 26, Act I of 1845 to eject a holder of a lakhiraj tenure though held under an invalid title DOORGA PERSHAD CHOWDHRY v RAJENDUR NARAIN ROY 2 Hay, 121

24 ———— *Agreement by former owner as to division of chur—Act I of 1845,*
f Govern
it to chur
estate, is
y the prior
owner with the owners of the adjoining estate to divide the chur equally; such an agreement is an alienation of, or incumbrance on the purchased estate and therefore, under s 26 of Act I of 1845, void as against the purchaser (*dissentiente* CAMPBELL, *J*) But *per* NORMAN, *J*, and CAMPBELL *J* it would seem that purchasers under any of the sale laws since Act XII of 1841 may be bound by a decree in a boundary suit against the prior owner BOYKUNTNATH CHATTERJEE v AMEEROONISSA KHATOON 2 W R., 191

25 ———— *Act I of 1845, s 26—Mokurari tenant in Benares Right of*—S 26 of Act I of 1845, which enables auction purchasers at sales for arrears of revenue to eject tenants in the province of Benares, was by s 1 of Act X of 1859 made subject to the modifications contained in the latter Act Therefore, notwithstanding a sale by auction for arrears of revenue, a mokurari tenant in the province of Benares is entitled to receive a pottah at the fixed rent theretofore paid by him MUNRO v BALUCK SINGH
[1 N W, 153 · Ed 1873, 235

26 ———— *Act I of 1845, s 26, cl 3—Purchaser's right to evict—Khodkast*

—

Act I of 1845 LOTF ALI KHAN v KASHEE DYAL
[1 W R, 6

27 ———— *Act I of 1845 s 26—Embankments* — Embankments are not incumbrances liable to be extinguished under s 26, Act

I of 1845, which refers only to tenures and leases COLLECTOR OF 24 PERGUNNAHS v JOYNARAIN BOSE
[W R, F. B, 17: 1 Ind Jur, O. S, 101

(c) BENGAL REGULATION XI OF 1822

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of
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wat
as landlord raised the rents throughout the property *Held* that the revenue sale cancelled all former arrangements entered into intermediately by the former proprietors and that the fresh settlement made by Government with the present proprietors would not restore former arrangements and rates because they happen to be the heirs of the former proprietors GANGAMONEE v LUTEEFOONISSA CHOWDHRAIN
[7 W R., 196

29. ———— **Right to cancel talukhdari tenure**—*Settlement—Right to eject*—The Government purchased the zamindari rights in a pergunnah, under Regulation XI of 1822 at a sale for arrears of Government revenue, and re settled one of the talukhs

had expired, the Government sold their zamindari rights to the defendant, who ejected the plaintiffs In a suit to recover possession —*Held* that it was the intention of Government to retain taukhdars in pos

this case the proceedings which were taken by the Government showed that they did not cancel the

to enhancement Under the sale law as it existed before 1822, a talukhdar could not be dispossessed at the will of the purchaser he was at most liable to pay the full pergunnah rate, and could only be ejected after refusal to pay the enhanced rate but under Regulation XI of 1822 dependent talukhs created subsequent to the decennial settlement were liable to be wholly avoided and annulled at the option of the

or might not exercise), he must take some clear step to declare the avoidance or cancellation of the tenure ASSANOOLLAH v OBHOY CHURN ROY
[13 W. R, P. C, 24 · 13 Moore's I. A, 317

30 ———— *Right of cancellation by Government as auction purchaser—Exercise of power of cancellation*—Where the Privy

SALE FOR ARREARS OF REVENUE
—*continued.*

4. INCUMBRANCES—*continued.*

Council, in the case of *Assanoolla* v. *Obhoy Churn Roy, 13 Moore's I. A., 317*, recognizing that the Government had, as the auction-purchaser at a sale for arrears of revenue, the option of cancelling and avoiding the talukhdari tenure in that case, ruled that it was incumbent on Government to take some clear step for the purpose of declaring the avoidance or cancellation of the tenure, and, finding that the Government had not exercised that power, declared the under-tenant entitled to retain possession of his land during the subsistence of his tenure, - *Held* that the decision did not apply to a case in which the proceedings of Government showed that it had exercised the power of cancellation. *Held* also that the indulgence in that case referred mainly to tenures purchased between 1817 and 1822. but not to tenures created after Regulation XI of 1822 had informed persons that their rights were liable to be cancelled by a purchaser at an auction-sale for arrears of revenue. APTABOODDEEN MAHOMED *v.* SANIOOLLAH. SANIAOLLAH *v.* APTABOODDEEN MAHOMED

[23 W. R., 245

31. ——— Right of Government to annul tenures—*Evidence of cancellation—Presumption.*—Though on the sale of a zamindari for arrears of revenue the Government has the right to annul all under-tenures not specially protected, yet it cannot be taken for granted that the Government has enforced its extreme rights and even where the right of Government to do so is asserted in the course of the proceedings, it is a matter which has been decided upon evidence, whether, having asserted its right, the Government afterwards actually enforced it. TRILOCHUN CHUCKERBUTTY *v.* KOMOLA KANT CHUCKERBUTTY. KOMOLA KANT CHUCKERBUTTY *v.* NURRO SINGHO SINGH . 25 W. R., 536

32. ——— *Evidence of cancellation — Settlement — Right to eject incumbrancers.*—Where at an auction-sale for arrears of revenue the Government becomes the purchaser of the property, and afterwards makes a settlement with the former proprietors of the under-tenures, the question whether or not the Government cancelled the under-tenures existing at the time of the sale is one to be decided solely according to the effect of the proceedings taken by the Collector in each case. It is a mistake to suppose that their Lordships of the Privy Council in the case of *Assanoollah* v. *Obhoy Churn Roy, 13 Moore's I. A., 317 : 13 W. R., P. C., 24*, intended to lay down a general rule according to which all questions of this nature are necessarily to be decided. SHOOK DEB SHAHA *v.* ALLADI

[2 C. L. R., 13

See GOOROO PERSHAD CHUCKERBUTTY *v.* BENI NATH CHUCKERBUTTY . . 2 C. L. R., 216

33. ——— Right of purchasers—*Tender of Government revenue by defaulter's mortgagee—Liability of Collector.*—The purchaser at a revenue sale, held in default of the payment of assessment, takes free of all incumbrances, although the revenue authorities, without otherwise depriving the defaulter of his right of occupancy, under s. 36 of the Bombay Survey Act, I of 1865, have only sold his right, title, and interest. *Abdul Gani* v. *Krishnaji Bhikaji, 10 Bom., 416*, and *Gundo Shiddeshvar* v. *Mardan Saheb, 10 Bom., 419*, followed. The Collector may be responsible to the mortgagee of a revenue defaulter for refusing to accept the tender made by him of the Government rent, but if he does refuse it, and the land is sold, the title of the purchaser is unimpeachable. GHELABHAI BHIKABIDAS *v.* PRANJIVAN ICHHARAM . . . . 11 Bom., 218

34. ——— Right of ejectment—*Beng. Reg. XI of 1822—Under-tenures—Right to impeach sale.*—The right to impeach a sale of lands for arrears of Government revenue extends not only to the defaulting proprietor, but to derivative holders under him. By Bengal Regulation XI of 1822, s. 30, all under-leases are extinguished by a Government sale of the proprietor's lands for arrears of revenue, and an auction-purchaser takes the lands clear of all under-tenures. At a sale by Government for arrears of revenue, the Government became purchasers, and afterwards granted a lease of the lands for a term of years, and put their leases into possession. At the time of the sale the lands were subject to an istemrari lease. No suit was brought to reverse the sale, but the Government some time afterwards, in consequence of doubts as to the legality of the sale, offered to give up their rights under the sale, and to restore the lands to the original proprietors, subject to the recognition of the claims of their lessees. This offer resulted in an arrangement between the Government, the original proprietors, and the Government lessees, and eventually the original proprietors upheld the lease to the Government lessees to a part of the lands called the Jungle Mehal for a term of years at a reduced rent. In a suit by the istemrari lessee for possession,—*Held* (reversing the decree of the Sudder Court) that by Bengal Regulation XI of 1822, s. 30, the istemrari lease was determined by the sale for Government arrears, and that the arrangement by which the lands were restored to the proprietors, subject to the rights of the Government lessees, was in the nature of a compromise, and not such an unconditional restoration as amounted to a reversal of the sale, and the consequent revival of the istemrari lease. *Aliter.*—If a suit had been brought and a decree made for reversal of the sale. WATSON *v.* SREEMUNT LAL KHAN . 5 Moore's I. A., 447

(*d*) ACT XI OF 1859.

35. ——— Lakhirajdars—*Beng. Reg. VII of 1822, s. 10, cls. 7 and 8—Arrangement by Commissioner for payment of revenue Payment by all through principal proprietor.*—In a suit for ejectment and khas possession by an auction-purchaser under Act XI of 1859 the defendants' case was that after resumption of their lakhiraj tenure a settlement had been made under Regulation VII of 1822 with the principal proprietor; and by that settlement it was arranged that the Government revenue payable

SALE FOR ARREARS OF REVENUE —*continued*

4 INCUMBRANCES—*continued*

by all the proprietors, the defendants among them, was to be paid through the principal proprietor, and that the defendants were to hold perpetual possession as sh kmidars and that their rights should be reserved intact *Held* that the possession of the defendants as lakhirajdars could not be disturbed as long as they paid the revenue assessed upon them under the settlement *Held* also (MARKBY J *dissentiente*) that cl 8 s 10, Regulation VII of 1822 applied only to cases referred to in cl 7,—that is of cultivating proprietors on pattidari or bhyachari tenure or the like, and not to a case of this kind RAM GOBIND ROY v KUSHUFFUDOZA 14 W R., 1

Affirmed on review where it was held that a Commissioner's amulnama cannot destroy legal rights even if no protest or objection be made The order of a Commissioner requiring proprietors having separate jummas to pay for the convenience of the Collector, their shares of revenue through one of their number cannot override their legal right of separate proprietorship allowed under the settlement law and preserved by express record or transform such right

[15 W. R., 141

36. ——— Right to annul incumbrances—*Encroachments by neighbouring estates* —The principle under which purchasers of estates at e condition is equally 859) as by h to actual encroachments on the talukh or estates by neighbours as to incumbrances or under tenures created on it by the old proprietor or by his laches GOLUCK MONEE DOSSEE v HURO CHUNDER GHOSE

[8 W. R., 62

37 ——— *Permanently-settled estate* —An auction purchaser at a revenue sale of a permanently settled estate is remitted to all the rights possessed by the original settler at the date of the settlement In order to abolish tenures and

... presumption in favour of a purchaser resting upon the principle that every bigha of land sold must contribute to the public endency of give force n l ng and ... MAHOMED HOSSEIN . 12 B. L. R., P. C, 210: 20 W. R, 44

38 ——— *Suit to annul under-tenures—Right to eject* —When an auction-purchaser at a sale for arrears of revenue creates a patni, he cannot sue to annul an under tenure within that patni, as his whole power under Act XI of 1859

SALE FOR ARREARS OF REVENUE —*continued.*

4 INCUMBRANCES—*continued*

passes to the patnidar, who alone can institute such a suit In such a case the patnidar's competency to sue is not affected by the fact of his being a tenant of only a portion of the estate, provided that portion contains the tenure which is sought to be resumed. A patnidar, under such circumstances though he may recover rent, is not entitled to eject an under-tenant who had been allowed to dig a tank and remain in possession undisturbed by the former proprietor for a long period (say upwards of thirty years), and who must therefore be assumed to have held with the acquiescence of the former proprietor, such acquiescence being equivalent to a lease SREEMUNT RAM DEY v KOOKOOR CHAND 15 W. R, 481

39 ——— *Land subject to*

... and that therefore the purchaser at the sale was entitled to the land free from any mortgage lien ABDUL GANI v KRISHNAJI BHIKAJI

[10 Bom, 416

40 ——— Right acquired by purchaser—*Act XI of 1859, ss 11, 13, 54 Sale of share of zamindari* *A* in exchange for his lakhiraj land obtained in 1791 from his zamindar 441 bighas of mal land which zamindar thereupon created rent-free The zamindar fell into arrears, and the zamindari was sold Subsequently three persons who had become owners of the zamindari, applied to the Collector under s 11 Act XI of 1859, and the Collector opened separate accounts with each of them for the revenue of their respective shares The revenue due from one of them fell into arrears, and his share, which included the 441 bighas was sold under s 13 and purchased by the plaintiff who now sued the descendants of *A* to recover possession *Held* that a sale of a share of a zamindari under s. 13 Act XI of 1859 does not convey to the purchaser the share free from all incumbrances created by the former zamindar, but he acquires the share, as laid down in s 54, subject to all incumbrances KASINATH KOOWAR v BANKUBEHARI CHOWDHRY

[3 B L. R, A. C, 446

S C KASHEENATH KOONWAR v BUNKO BEHAREE CHOWDHRY 12 W R, 440

41. ——— *Act XI of 1859, s 32—Right of purchaser to eject holders of howla and nim howla tenures* —Where certain howla and nim howla tenures were never set aside by the Revenue Settlement or Revenue Commissioner's orders from the time they were recorded as existing rightful hereditary tenures of those classes at the first settlement,—*Held* that the purchaser of the ousut talukh could not eject the holders of those tenures under s 32, Act XI of 1859, so long as they paid their jumma according to the settlement jummabundi BURODA KANTH LAHA v. GOBIND CHUNDER

SALE FOR ARREARS OF REVENUE *—continued*

4 INCUMBRANCES—*continued*

in 1886 He applied under Ch X of the Bengal Tenancy Act for the measurement of the estate and

for it it was entered on the record of rights as mâl land held under those sanads as lakhiraj The Special Judge on appeal by the plaintiff held that the land having been found to be mâl should have been entered as mâl land unassessed with rent In a suit to have the land assessed with rent it was found that the sanads under which the defendant claimed to hold were granted not by any predecessor in title of the plaintiff and were of a date anterior to the Permanent Settlement *Held* that the adverse possession set up by the defendant was within the meaning of s 53 of Act XI of 1859 an incumbrance subject to which the plaintiff, as a proprietor whose estate had been sold took it on repurchase If such adverse possession therefore were sufficiently long, the suit would be barred by limitation The plaintiff could not be regarded as a person who had acquired the estate free from all incumbrances which may have been imposed upon it after settlement as provided

revenue The case was remanded for findings whether the land was mâl or lakhiraj and whether the defendant s adverse possession was long enough to bar the suit KARMI KHAN *v* BROJO NATH DAS

[I L R, 22 Calc, 244

47 ——————— *Right of auction purchasers to annul incumbrances—Act XI of 1859, s 37—Suit to cancel under tenures—Parties*—The

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under tenure, is a right that must be exercised by all the purchasers jointly where there are more purchasers than one JATRA MOHUN SEN *v* AUKHIL CHANDRA CHOWDHRY I L R, 24 Calc, 334

AKHIL CHANDRA CHOWDHRY *v* JATRA MOHAN SEN 1 C W N, 314

48 ——————— *Purchaser at a revenue sale—Act XI of 1859, s 37—"Entire estates"—Partition by Collector Effect of—Estates Partition Act (Beng Act VIII of 1876) s 123—Time of settlement*—A new estate created upon a partition by the Collector comes within the meaning of "entire estate" in s 37 of Act XI of 1859 The words "time of settlement" in that section mean the time when the contract was made with Government, and in the case of a permanently settled estate mean the time of permanent settlement A partition by the Collector merely apportions the amount of revenue, there is no settlement of the revenue in any sense at the time of such partition KOOWAR SINGH *v* GOUR SUNDER PERSHAD SINGH

[I L R, 24 Calc, 887

49 ——————— *Act XI of 1859 s 37—"Eject," Meaning of—"Entire estate" Meaning of Notice*—When an estate sold for arrears of revenue is recorded in a separate number in the Collector's rent-roll with a separate revenue assessed upon it, and the specification in the sale certificate granted under s 28 of Act XI of 1859 in the form prescribed by the Act shows that the estate sold was an entire estate, the mere fact of a portion of the lands of that estate being joint with those of certain other estates cannot stand in the way of its being an

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made in favour of a co owner of property *Hulodhur Sen v Gooroo Das Roy, 20 W R 126 Radha Prosad Wasti v Esuf, I L R, 7 Calc, 414* approved of *Held* further that the law does not require any notice as a necessary preliminary to a suit to avoid an under tenure although the tenure is not *ipso facto* avoided by a sale of the estate for arrears of revenue and is only liable to be avoided at the option of the purchaser at such sale but such option may be exercised by the institution of a suit within the time allowed by law *Titu Bibee v Mohesh Chandra Bagchi I L R 9 Calc 683* referred to KAMAL KUMARI CHOWDHURANI *v* KIRAN CHANDRA ROY 2 C W N, 229

50 ——————— *Unrecorded co partner Purchase by—Incumbrances—Act XI of 1859, ss 37, 53*—A in November 1862 purchased a portion of an estate sold in execution of a decree against the then proprietor This sale was not confirmed till the 9th February 1863 Default occurred in the payment of the Government revenue in January 1863 and the entire estate was put up for sale by the Collector and purchased by A on the 29th March 1863 *Held* that A, at the time of his second purchase was an unrecorded co partner of an estate within the meaning of s 53 of Act XI of 1859 and therefore took the entire estate subject to all the incumbrances existing at the time of the Government sale for arrears of revenue ABDOOL BARI *v* RAMDASS COONDOO

[I L R, 4 Calc, 607

51 ——————— *Re purchase by co proprietor—Rights of under-tenants—Incumbrances—Act XI of 1859 s 53*—Under s 53 of Act XI of 1859 a co-proprietor who purchases an estate at a sale for arrears of Government revenue takes it subject to the incumbrances created by the

SALE FOR ARREARS OF REVENUE —*continued.*

4. INCUMBRANCES—*continued.*

defaulting proprietor. MAHOMED GAZI CHOWDHRY *v.* LEICESTER . . . . 7 B. L. R., Ap., 52

S. C. MAHOMED GAZEE CHOWDHRY *v.* PEAREE MOHUN MOOKERJEE . . . 16 W. R., 136

And this is so whether he purchases benami or from the benamidar after his purchase. *See* same case, and case of ALUM MANJEE *v.* ASHAD ALI [16 W. R., 138

52. ———— Act XI of 1859, s. 54—*Boná fide incumbrances.*—The object of s. 54, Act XI of 1859, is to protect, not every incumbrance which may be set up, but only *boná fide* incumbrances executed in contemplation of an impending sale or in fraud of a possible purchaser. Where surrounding circumstances suggest such creation, it is for the party setting up the incumbrance to establish its *boná fide* character. MONOHUR MOOKERJEE *v.* JOYKISHEN MOOKERJEE . . . 5 W. R., 1

53. ———— *Lease of a share.*—A lease of a share is protected under s. 54, Act XI of 1859. KALEE PUDDO GHOSE *v.* MONOHUR MOOKERJEE . . . . 7 W. R., 295

54. ———— and s. 13—*Liability to incumbrances—Mokurari lease—Inquiry as to title of alleged owners of share sold—Benami transfers—Limitation Act (XV of 1877) sch. II, art. 144.*—After the sale of a share in an estate under the provisions of Act XI of 1859, a suit was brought to establish a mokurari lease, as an incumbrance under s. 54, upon the share in the hands of the purchaser. This share having been held by several successive benami holders, the main question was whether those who had granted the mokurari were entitled to all or to any, and what part, of the land comprised in their grant; and as to this point the most important fact was the actual possession or receipt of the rents; this being also material in regard to limitation under Act XV of 1877, sch. II, art. 144, the twelve years' bar commencing from the date of possession first held adversely. IMAMBANDI BEGUM *v.* KAMLESWARI PERSHAD [I. L. R., 14 Calc., 109 L. R., 13 I. A., 160

55. ———— and ss. 10, 11, 28, 53, and Sch. A—*Rights of purchaser of share of estate admitted to special registration under ss. 10, 11 of Act—Rights of mortgagee of share against purchaser.*—There is a clear distinction between the rights acquired under ss. 53 and 54 of Act XI of 1859. Under the former section, the terms of the certificate given under Sch. A are limited, and a purchaser under that section acquires the estate subject to all incumbrances existing at the time of sale, whether created before or after the default, and even up to the date of the sale; but there is no such limitation to the terms of a certificate given to a purchaser under s. 54, and all incumbrances created after the date on which a purchase under that section takes effect, that is, after the date on which the default was committed, are void. A share of a talukh admitted to special registration, under ss 10 and 11 of Act XI of 1859, was advertised for sale under that Act in default of payment of the June kist of Government revenue. On the 25th July the recorded sharer mortgaged his interest in that share to the plaintiff. The sale took place on the 26th September, and the share was purchased by the defendant who obtained a sale certificate in due form under the Act declaring, in accordance with s. 28, that his title accrued from the 29th June, the day after the latest date allowed for payment of the June kist. *Held* that the mortgage was of no effect as an incumbrance under s. 54 of the Act CHOWDHRY JOGESSUR MULLICK *v.* KHETTER MOHUN PAL [I. L. R., 17 Calc., 148

(*e*) MADRAS ACT II OF 1864.

56. ———— *Mad. Act II of 1864—Sale of land mortgaged—Purchase by mortgagee—Equity of redemption*—Where land has been mortgaged and while in the possession of the mortgagee sold for arrears of revenue under Madras Act II of 1864, and purchased by the mortgagee at the revenue sale, such sale does not necessarily deprive the mortgagor of his right to redeem. JAYANTI LAKSHMAYA *v.* YERUDANDI PEDDA APPADU [I. L. R., 7 Mad., 111

(*f*) BENGAL ACT VII OF 1868.

57. ———— *Beng. Act VII of 1868, s. 12—Auction-purchaser, Right of—Lakhiraj grant—Onus probandi.*—A person seeking to obtain the benefit of s. 12, Bengal Act VII of 1868, must give some *prima facie* evidence to show that the incumbrance which he seeks to avoid is an incumbrance falling within the terms of the section,—that is, an incumbrance imposed on the tenure by some one who previously held it. The law relating to lakhiraj grants reviewed and explained. KOYLASHBASHINY DOSSEE *v.* GOCOOLMONI DOSSEE [I. L. R., 8 Calc., 230 : 10 C. L. R., 41

(*g*) N.-W. P. LAND REVENUE ACT.

58. ———— *N.-W. P. Land Revenue Act (XIX of 1873), ss. 166, 167, 168—Agriculturists' Loans Act (XII of 1884), s. 5—Takavi loans—Sale of house in default of payment of loan—Effect of such sale.*—The provisions of ss. 166, 167, and 168 of the N.-W. P. Land Revenue Act, 1873, apply only to the sale of a patti or mahal. Where therefore a house upon which there existed a prior incumbrance was sold on account of the non-payment of certain takavi advances, it was held that such sale did not avoid the prior incumbrance. SHEO SAMPAT PANDE *v.* BANDHU PRASAD MISR [I. L. R., 22 All., 321

SALE FOR ARREARS OF REVENUE
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5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

talukh in this case having come into the possession of Government by resumption in 1841,—*Held* that the auction purchaser could have no better title, and could be in no better position than the Government at the time of resumption BUZLOOL RAHMAN *v* PRANDHUN DUTT . . . 8 W. R., 222

60 ———— Purchaser at sale on default of purchaser of rights of Government —*Government proclamation —Act XI of 1859* — The Government having sold its zamindari rights in certain taluks after a proclamation that the purchaser would be bound to abide by the settlements entered into by it with the defendant talukhdars one of the talukhs a mehal, J C B, was purchased with this reservation by *M*, who then sued without success to eject the proprietor of the said talukh After this, *M* having defaulted in the payment of the Government revenue, the mehal was sold for arrears under Act XI of 1859 and purchased by *G* *Held* that *G* was in a very different position from *M* (who had purchased the zamindari rights of the Government), and was not bound by the terms of the Government proclamation, but was as his sale certificate showed, the purchaser of an entire estate separately recorded on the Collector's rent roll. GHOLAM MUKHDOOM *v* ASHUCK JAN BIBEE . 25 W. R., 86

61 ———— Right to resume and assess lakhiraj land—*Act XI of 1859, s 54* —When the former proprietor had a right to bring a suit to resume and assess lakhiraj land, the auction-purchaser of his rights and interests acquired the same right under s 54, Act XI of 1859 DABEE MUNNEE CHOWDHRAIN *v* FAQUEER CHUNDER SHAHA [W. R., 1864, 293

62 ———— Period from which title of purchaser dates—*Act I of 1845, s 20* —The title of an auction purchaser at a sale for arrears of revenue accrues not from the date of sale, but from the date on which the sale was confirmed, and certificate granted under s 20, Act I of 1845 DHEPUT SINGH *v* MOTHOORANATH JAH W. R., 1864, 278

63. ———— Liability for Government revenue—*Right to recover money paid for arrears of revenue—Act XI of 1859, s 21* —The purchaser of an estate sold for arrears of revenue on the 28th Pous the latest date of payment of the revenue due for the three months previous to Pous, is not entitled to recover from the defaulter the amount of revenue which he was subsequently obliged to pay for the month of Pous KHEME SOONDAREE DOSSIA *v* NUNDKOOMAR GOOPTO . . 4 W. R., 75

64. ———— *Suit for money paid for arrears of revenue—Character of Govern-*

such revenue are situate. It is not therefore liable to apportionment, and the person who is the owner of a revenue-paying estate at a time when the payment of the revenue falls due is the only person liable for its payment The purchaser of an estate which pays Government revenue takes it subject to all revenue and cesses whether in arrear or accruing *Held* therefore, in a suit by a purchaser for a certain sum for Government revenue and cesses, which became due after the date of though due for a period previous to his purchase, which sum he alleged he had been compelled to pay to save his interest in the subject of his purchase that he was not entitled to recover. CHATRAPUT SINGH *v* GRINDRA CHUNDER ROY I. L. R., 6 Calc., 389 . 7 C. L. R., 456

See WOZEER BEGUM *v* FUZLOONISSA [W. R., 1864, 373

65 ———— *Registered occupant—Bombay Survey Act, I of 1865* —Government revenue being a paramount charge on the land, it adheres to the land and to every portion of it independently of the hands into which it passes, or the subordinate rights that may have been created by the occupant out of his own qualified proprietorship, so that, even after a valid sale of the land by the occupant to a purchaser who neglects to get his name registered in his books the Collector may, after giving notice of the failure to pay the revenue to the registered occupant in whom alone, according to the Bombay Survey Act, I of 1865, vests the right of conditional occupancy, put up the land for sale, and the purchaser gets occupancy rights free from all claims on the part of the first purchaser GUNDO SHIDDHESHVAR *v* MARDAN SAHEB 10 Bom., 419

66.———— *Beng Reg XLIV of 1793, ss 5 and 7—Enhancement of rent* —The object of s 5, Regulation XLIV of 1793 taken together with s 7, was not the destruction of the under tenures upon the soil of the parent estate for arrears of Government revenue It only empowered the purchaser at such sale to avoid the subsisting engagements as to rent and to enhance the rent to that amount at which according to the established usages and rates of the pergunnah or district, it would have stood had the cancelled engagement so avoided never existed *Quære*—Whether such a power was given only to the purchaser or to him and his heirs, or whether it was a power attaching to the zamindari and passing to subsequent purchasers SHURNOMOYEE *v* SUTTEES CHUNDER ROY [2 W. R., P. C., 14

S C. SURNOMOYEE *v* SUTTEES CHUNDER ROY [10 Moore's I. A., 123

SALE FOR ARREARS OF REVENUE —*continued.*

5. PURCHASERS, RIGHTS AND LIABILITIES OF—*continued.*

67. ——— ——— *Beng. Reg. XI of 1822, ss. 30, 33—Beng. Reg. XLIV of 1793, s. 5—Beng. Reg. VIII of 1793, s. 51.*—A zamindari was sold for arrears of Government revenue under Regulation XI of 1822. The purchaser's representatives sued to enhance the rent of the under-tenure. *Held* that they had no right to enhance. The rights of the purchaser were defined by ss. 30 and 33 of Regulation XI of 1822, which were repealed by Act XII of 1841, and that Act, with the exception of the 1st and 2nd sections, was again repealed by Act I of 1845. Neither of the two last-mentioned statutes contains any saving of rights acquired under the statutes which it repealed, but expressly limited the enlarged powers which it gave to purchasers at sales for revenue arrears to purchasers at future sales. A sale for arrears of revenue cannot of itself merely, and without any act, proceeding, or demonstration of will on the part of the purchaser, alter the character of an under-tenure. *Semble*—S. 5, Regulation XLIV of 1793, is now of no force for any purpose but that of declaring the general principles upon which all the subsequent legislation has proceeded, *viz.*, that of putting a purchaser at a sale for arrears of revenue in the position of a party with whom the perpetual settlement of the estate was made. Where an under-tenure existed at the time of the decennial settlement, the only right which the zamindar could exercise over it was that conferred by s. 51 of Regulation VIII of 1793. The decision in the case of *Surnomoyee* v. *Suttees Chunder Roy, 10 Moore's I. A., 123,* commented on, explained, and reiterated. SATYASARAN GHOSAL *v.* MAHESH CHANDRA MITTER . . . **2 B. L. R., P. C., 23**

S. C. SUTTO SURRUN GHOSAL *v.* MOHESH CHUNDER MITTER

[12 Moore's I. A., 263 : 11 W. R., P. C., 10

S. C. in High Court, SUTTO CHURN GHOSAL *v.* MOHESH CHUNDER MITTER. SUTTO CHURN GHOSAL *v.* TARINEE CHURN GHOSE . **3 W. R., 178**

68. ——— **Certified purchaser**—*Act XI of 1859, s. 36—Suit by certified purchaser—Benamidar.*—A certified purchaser at a sale for arrears of revenue, suing to recover possession of land from which he has been ousted, is not debarred from the benefit of s. 36, Act XI of 1859, unless he has acknowledged himself to be a benamidar. JADUB RAM DEB *v.* RAMLOCHUN MUDDUCK

[5 W. R., 56

Review rejected . . . **19 W. R., 189**

69. ——— *Act XI of 1859, ss. 36 and 53—Purchase by former proprietor.*—One of the co-sharers in an estate which had been sold under Act XI of 1859 sued to recover her share from the certified purchaser (*M*), himself one of the original owners. Her case was that she provided a portion of the purchase-money, but that her name was not registered on account of *M's* having no written authority to act on her behalf. *M*, however, executed an ikrarnamah in which he admitted receipt of the purchase-money of plaintiff's 2 annas share, and covenanted to give her possession. Defendant denied having received any contribution or consideration-money from the plaintiff, though admitting execution of the ikrarnamah. *Held* that no separate title was given to the plaintiff by the ikrarnamah, and that the suit was substantially one to oust a certified purchaser on the ground that part of the purchase was made on behalf of another person, and the suit was therefore barred by s. 36 of Act XI of 1859. *Held* also that there is nothing in Act XI of 1859 which makes it illegal for a former proprietor or co-sharer to be a purchaser of his estate at a sale for arrears due on that estate. NEYNUM *v.* MUZUFFUR WAHID . . **11 W. R., 265**

70. ——— ——— *Decree setting aside sale, Effect of not executing, within six months—Sale, Validity of—Right of auction-purchaser to bring suit for declaration of title and possession—Revenue Sale Law (Act XI of 1859), s. 34.*—Certain property having been sold for arrears of Government revenue, the defaulting tenant brought a suit in the Civil Court to have the sale set aside, and obtained a decree which he did not attempt to execute till after the expiry of six months from its date. *Held*, in a suit brought by the auction-puchaser to recover possession of the share he had brought at the sale, that such non-execution of the decree had the effect of restoring the sale so far as it concerned the defaulter, and that the plaintiff was entitled to succeed. ABDUL LOTIF *v.* YOUSUFF ALI

[I. L. R., 21 Calc., 255

71. ——— *Liability of purchaser at a sale, who enters into possession of the purchased property, to account for mesne profits to the person in whose favour the decree is subsequently reversed.*—A purchaser of property at a sale under the Madras Revenue Recovery Act, who enters into possession thereof, is in rightful possession until the decree is set aside. He is not therefore a trespasser and liable to make good any loss sustained by the rightful owner by being kept out of possession; but he is bound to account for mesne profits, the calculation of which is to be based on a proper discharge of the stewardship of the property. *Dakhina Mohun Roy Chowdhry* v. *Saroda Mohun Roy Chowdhry, I. L. R., 21 Calc., 142 : L. R., 20 I. A., 160,* cited and followed. PERUMAL UDAYAR *v.* KRISHNAMA CHETTYAR **I. L. R., 17 Mad., 251**

72. ——— *Act XI of 1859, s. 54—Sale of share of Hindu widow—Effect of sale on reversionary interest.*—Where a share of an estate held by a Hindu widow was sold for arrears of revenue, it was contended that under s. 54 of Act XI of 1859, the estate acquired by the purchaser lasted only during the lifetime of the widow. *Held* that the purchaser did not take any interest limited to the life of the widow, but that the

SALE FOR ARREARS OF REVENUE —*continued*

5 PURCHASEPS RIGHTS AND LIABILITIES OF—*continued*

entire share passed by the sale DEBI DAS CHOWDHURI v BIPRO CHARAN GHOSAL
[I L R, 22 Calc, 641

73 ——————— *Act XI of 1859 s 14—An ijmali portion of an estate in arrear—Arrear separately deposited by co sharers of other portions—Certificate of sale issued jointly to all the co sharers—Share of each co sharer in the purchased portion—Transfer of Property Act (IV of 1882) s 45—Presumption* —Where an estate was divided into several shares and one of them was left

fetch a price sufficient to cover the sum in arrears and each of the co sharers paid the entire amount of arrear separately and the Collector issued a certificate of sale jointly to them —*Held* that the different sharers should be entitled to equal shares in the purchased estate irrespective of their shares in the parent estate ...
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of the funds an equal share DEBI PERSHAD v AKLIO KOER
4 C W N, 465

74 ——————— *Purchaser at a revenue sale—Act XI of 1859 ss 28 35 and 37—Entire estate Meaning of—Effect of estate being recorded under a distinct number on the rent roll with a separate revenue assessed upon it—Protected interest* —When an estate is recorded under a distinct number on the touzi or rent roll of the Collector
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Kumari Chowdhrani v Kisan Chunder Roy 2 C W N 229 referred to PRKONATH MITTER v KIRAN CHANDRA ROY
I L R, 27 Calc, 290

75 ——————— *Mad Reg XXV of 1802 s 12—Madras Revenue Recovery Act II of 1864 ss 32 41* —The purchaser at a revenue sale is *prima facie* entitled to claim the fasal rate of rent PALANI v PARAMASIVA
[I L R, 13 Mad, 479

76 ——————— *Madras Revenue Recovery Act (Mad Act II of 1864) ss 1 39 42—Rights of jenmi in Malabar—Grant by Government of waste land on a cowle* —The Collector of Malabar in 1869 let defendant 2 into

SALE FOR ARREARS OF REVENUE —*continued*

5 PURCHASERS RIGHTS AND LIABILITIES OF—*concluded*

Recovery Act 1864 and sold to defendant 3 The plaintiff who was the jenmi of the land had no notice of the grant of either the cowle or the pottah He asserted his right to jenmibhogam in a petition presented to the Collector at the time of the sale but the sale proceeded without reference to his claim The present suit was brought to set aside the sale *Held* the interest of the jenmi did not pass by the sale SECRETARY OF STATE v ASHTAMURTHI
[I L R., 13 Mad, 89

77 ——————— *Madras Revenue Recovery Act (II of 1864) ss 42 44—Sale of part of a holding for arrears of revenue due on another part* —The plaintiff sued as the purchaser under a Court sale for possession of certain land which the defendant s vendor had purchased at a sale held under the Madras Revenue Recovery Act for arrears of revenue accrued due on other land belonging to the judgment debtor *Held* that under the sale for arrears of revenue the land had passed to the defendant s vendor and that the suit should be dismissed SAMA v SRINIVASA
[I L R, 13 Mad, 477

78 ——————— *Madras Revenue Recovery Act (Mad Act II of 1864) s 42—Incumbrance—Permanent lease at a low rent* —One of the villages in a mitta was demised by the mittadar to *A* on a permanent lease at a rate below both the fasal assessment and the proportion of revenue payable upon it The lessee s interest was brought to sale in execution of a decree and purchased by *B* and ultimately was sold in 1884 to the plaintiff who now sued the tenant in possession to enforce an exchange of pottah and muchalka In the interval in 1883 the village was sold for arrears of revenue under Madras Act II of 1864 to *C* and the defendant claimed to hold the land from *C* *Held* that the permanent lease was an incumbrance under the Madras Revenue Recovery Act 1864 s 42 and was voidable by the purchaser at the revenue sale although it had not been declared to be invalid by the Collector NARASIMMA v SURIANARAYANA
I L R, 16 Mad, 144

6 DEPOSIT TO STAY SALE

79 ——— — **Tender of full amount of arrears of revenue** — *Madras Revenue Recovery Act s 37—Sale for arrears accrued since attachment* —When a defaulter whose land has been attached and is being brought to sale for arrears of revenue tenders the full amount of the arrears of

land SECRETARY OF STATE FOR INDIA v GOUNDAR
[I L R, 22 Mad, 5

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*continued.*

80. ———— **Right of person making deposit**—*Act I of 1845, s. 9.*—By Act I of 1845, s. 9, it is enacted, with reference to sales for arrears of revenue, that Collectors shall, at any time before sunset of the latest day of payment, receive as a deposit, from any party, not being a proprietor of the estate in arrear, the amount of the arrear of revenue due from it, to be carried to the credit of the said estate; and if the party depositing, whose money shall have been so credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party which would have been endangered or damaged by the sale of the estate, he shall be entitled to recover the amount of the deposit, with interest, from the proprietors of the estate. *Held* that the person so depositing money for arrears does not thereby acquire any lien on the estate. FAGAN *v.* SREEMOTEE DOSSEE [Marsh., 223

S. C. SREEMOTEE DOSSEE *v.* FAGAN . 2 Hay, 75

81. ———— **Right of one proprietor against co-proprietors**—*Right against patnidar of co-proprietor.*—A proprietor who has paid his own and his defaulting co-proprietor's share of the Government revenue to save the estate from sale, can recover from him the co-proprietor's share of the revenue, but he cannot recover it from the latter's patnidar, whose only liability was to pay his rent to his lessor. BYKUNTNATH ACHARJEE *v.* GOOROO CHURN BOSE . . . . 7 W. R., 247

82. ———— **Right of person both proprietor and mortgagee**—*Payment made as mortgagee to save estate from sale.*—A person who is both proprietor and mortgagee is not entitled as mortgagee to claim a deduction on account of Government revenue paid by him to save the estate from sale for arrears of revenue, when after resumption it ceased to be a lakhiraj estate, which payment it was his duty to have made in his capacity of proprietor. DOOLAR CHUNDER *v.* DAMOODUR NARAIN [3 W. R., 162

83. ———— **Voluntary payment**—*Right of mortgagee to recover revenue paid.*—Suit for Government revenue paid by mortgagee in possession of property mortgaged for a debt secured by an instalment-bond executed in his favour by the mortgagor through a mooktear. Although the plaintiff could not prove the execution by the defendant of the power of attorney in the name of the person alleged to have signed the bond for the defendant, yet as the plaintiff had paid the arrears of revenue due on the mortgaged property in the *bonâ fide* belief that he had a rightful interest in it, and would thereby save the property from sale, and be entitled to recover the money so paid, such payment was held to be not officious, and the suit was decreed. BADAUM KOOWUR *v.* LALLA SEETUL PERSHAD . 5 W. R., 126

84. ———— *Act XI of 1859, s. 9—Suit by mortgagee to recover deposit of arrears of revenue.*—A mortgagee who obtained a decree for possession with mesne profits on 11th May 1864 sued the mortgagor, under s. 9, Act XI of 1859, to recover a sum alleged to have been paid by plaintiff on account of Government revenue for the quarterly kist falling due on the 25th June following. *Held* that as at the time the deposit was made the plaintiff was the proprietor of the estate in arrears, he was not a party contemplated in s. 9, and the suit did not lie. JUSSODA DOSSEE *v.* MATUNGINEE DOSSEE . . . 12 W. R., 249

85. ———— *Sale afterwards set aside—Payment by purchaser made pending proceedings to set aside sale to save estate from further sale.*—Plaintiff, the inchoate owner of an estate purchased by him at a sale in execution of a decree against it, was held justified, whilst the proceedings with regard to the validity of the sale were pending, in preserving the estate from sale to another, whether for arrears of Government revenue or for the amount of a decree for which the estate had been attached, and when the sale to him was set aside and restored to *A*, entitled to be repaid any amounts *bonâ fide* paid by him for the preservation of the estate. If *A* made any arrangement with mokuraridars by which the latter stipulated to pay the Government revenue for him, plaintiff could not recover from the mokuraridars, there being no privity between him and them. His remedy was against *A*, who again had his remedy against the mokuraridars. HOSSEIN BUKSH KHAN *v.* ROY DHUNPUT SING . . . 18 W. R., 289

86. ———— **Liability of estate held by Hindu widow for debt incurred to person making payment to protect tenure**—*Act I of 1845, s. 9.*—An estate mortgaged was about to be sold for arrears of Government revenue, when it was saved from sale by the mortgagee depositing a sum sufficient to discharge the revenue. The mortgagee brought a suit against the person in possession of the talukh, the Hindu widow of the original mortgagor, seeking, under s. 9, Act I of 1845, to obtain repayment from her personally of the money paid to save the sale of the talukh, not making the reversioners defendants, and not praying that the talukh in its entirety might be sold to pay the amount due. A decree was given in that suit to the mortgagee, and on execution of that decree the reversioners intervened. *Held* that the mortgagee and those claiming under him had no charge on the estate, and were not entitled to have it sold in its entirety to pay the amount which was paid in to stop the sale of the estate. The action brought under s. 9, Act I of 1845, was only a personal action, and the decree gave no remedy against the land, the sale of which for arrears of revenue had been stopped by the deposit. In such a suit the question is not whether the person who pays the arrears acquires thereby a charge on the talukh which he saves from sale, but whether he seeks to enforce that right: he must do so in a suit properly framed for that purpose and not merely in a suit which is confined to a personal remedy against the person in possession of the talukh.

SALE FOR ARREARS OF REVENUE
—*continued*

6 DEPOSIT TO STAY SALE—*continued*

If the person who so pays the arrears of rent seeks repayment only, under the section and law cited, as against the person in possession of the talukh who has only a limited interest therein, and confines his suit to

person the object of which is to recover, or to charge an estate of which a Hindu widow is the proprietress she will, as defendant, represent and protect the estate, as well in respect of her own as of the reversionary interest. NOGENDER CHUNDRO GHOSE *v* DOSSEE . 8 W R, P. C, 17

S C NUGENDER CHUNDER GHOSE *v* KAMINEE DOSSEE . 11 Moore's I A, 241

87. ———— Payment by patnidar to save tenure from sale—*Mistake in Collectorate in crediting payment as deposit*—The payment of revenue into the Collectorate by a patnidar to

he took a receipt showing that the money was received as a deposit and not as a payment of revenue, does not render the patnidar liable JOTENDER MOHUN TAGORE *v* KISHEN MONEE DABEE

[W. R., 1864, Act X, 11

88. ———— Payment by shareholder —*Voluntary payment of arrear of revenue—Right to reimbursement—Act XI of 1859 s 13*—A shareholder voluntarily coming forward and paying an arrear of revenue due by a defaulting co shareholder who has a separate account, before the share of such

... legal obligation to repay the amount advanced KISHEN CHUNDER GHOSE *v* MUDDUN MOHUN MOZOOMDAR . . 7 W R, 365

89 ———— Right of suit to recover amount of deposit—*Act XI of 1859, s 9—Suit to recover amount paid as deposit to save estate from sale*—Where a party pays into the Collectorate, under the provisions of s 9 Act XI of 1859 arrears of

HILLS . . . 11 W. R, 377

90 ———— Right of suit to recover amount deposited—*Payment made by mokurraridar for predecessor—Payments of revenue in excess of lease—Voluntary payment*—Instalments of Government revenue paid by a mokuraridar on account of his predecessor, being necessary payments made to save the estate from sale, are recoverable, but not under Act X of 1859 Payments on account of Government revenue in excess of lease are not recoverable BUNWAREE KISHORE *v* JOY CHUNDER GOSSAIN . . 2 W R., 262

91 ———— Obligation of lender of money to stay sale *Necessity*—A lender is not bound to inquire into the exact amount necessary to be borrowed to save an estate from a sale for arrears of Government revenue It is sufficient if he satisfy himself of the existence of a necessity to justify him in looking to the estate for repayment NUFFER CHUNDER BANERJEE *v* GUDDADHUR MUNDLE 3 W R., 122

92 ———— Right to contribution where part owner pays revenue due on whole estate to save his own interests—*Madras Revenue Recovery Act, s 35—Contract Act ss 69, 70*—In 1881, while the pottah of certain land held on raiyatwari tenure stood in the name of defendant No 1, the real owner being defendant No 2 the revenue fell into arrear Subsequently plaintiff and defendant No 3 each bought a portion of the land and defendant No 3 sold his portion to defendant No 4 After this the land in plaintiff's possession was attached for the said arrears of revenue and plaintiff paid the whole amount to prevent a sale Plaintiff sued to recover from defendants 1 to 4 a portion of the arrears paid by him He also prayed that the land in the possession of defendant No 4 might be held liable The claim was decreed, but on appeal by defendants 3 and 4 the suit was dismissed as against them Plaintiff appealed, making defendent No 4 alone respondent *Held* that plaintiff was entitled to a decree for contribution against defendant No 4 and to a charge on the land in his possession SESHAGIRI *v* PICHU

[I. L. R., 11 Mad, 452

93 ———— Payment of arrears of village revenue by the assignee of a mortgagee of portion of the village property in order to stay the sale—*Madras Revenue Recovery Act (Mad Act II of 1864) s 30—Defaulter—Registered and real owners*—The plaintiff was

from the village, in order to prevent its sale In 1888 the plaintiff's 3⁵⁄₈th p[illegible]s were sold in execution of the decree of 1885 to the 85th defendant subject to a charge for the amount of the revenue arrears paid by the plaintiff In 1890 the plaintiff instituted the present suit to recover from the entire village and from the defendants Nos 1 to 84 personally the amount of these arrears *Held* that the 85th

their holdings, may be treated as defaulters within the

SALE FOR ARREARS OF REVENUE —*continued.*

6. DEPOSIT TO STAY SALE—*concluded.*

meaning of s. 35 of that Act. *Seshagiri* v. *Pichu, I. L. R., 11 Mad., 457,* followed. SRINIVASA THATHACHAR v. RAMA AYYAN I. L. R., 17 Mad., 247

7. SALE-PROCEEDS.

94. ———— **Right to surplus proceeds** —*Estate subject to mortgage.*—When mortgaged lands are sold for arrears of Government revenue, not accrued through default of the mortgagee, any proceeds which may arise from the sale in excess of the arrears belong to the mortgagee, and he has a right of action for their recovery. HEERA LALL CHOWDHRY v. JANOKEENATH MOOKERJEE

[16 W. R., 222

95. ———— **Right to payment out of surplus proceeds**—*Liability of purchaser to reimburse judgment-debtor—Act XIX of 1873 (N.-W. P. Land Revenue Act), s. 146—Act X of 1877, s. 316.*—A share of a mehal, arrears of Government revenue being due in respect of the whole mehal, was sold in execution of a decree. The existence of the arrears was notified at the time of sale. The title of the purchaser to the share vested from the date of the sale, Act X of 1877, s. 316, being in force at that date. The Collector attached and realized the amount of the arrears out of the surplus sale-proceeds. *Held* that, inasmuch as at the date of the realization of the arrears out of the surplus sale-proceeds the purchaser was the proprietor of the share, and it and he were responsible under s. 146 of Act XIX of 1873 (N.-W. P. Land Revenue Act) for the arrears, the payment of the arrears out of the surplus sale-proceeds must be regarded as a payment made *in invitum* by the judgment-debtor for the purchaser, and the judgment-debtor was entitled to be reimbursed by the purchaser. RAM CHAND v. FATEH SINGH

[I. L. R., 6 All., 112

96. ———— **Suit for sale-proceeds by mortgagee**—*Omission to give notice of charge on estate sold.*—*A* purchased certain villages in the name of his son *B*. *A*, being indebted to *C*, executed a mortgage-bond and deposited the title-deeds of those villages with *C* as security for the debt. *C* afterwards sued *A* for recovery of the mortgage-debt, and ultimately obtained a decree in his favour. Pending this suit, *A* died and was succeeded by *B*, his heir, against whom the suit was revived. *B* became a defaulter to Government, when the Government authorities seized the villages, and took steps for bringing them to sale to satisfy the Government demands. *C* informed the Government officer of his claim, and petitioned to have the sale stayed, but the Collector sold the villages as the property of *B*, suppressing the notice of the equitable charge of *C* upon the villages. *C* then sued *B*, the Collector, and the auction-purchasers, claiming to be entitled to the sale-proceeds of the villages in the hands of the Government in satisfaction of his mortgage-debt. The Sudder Dewany Court dismissed the plaintiff's claim, on the ground that the decree made in the suit against *A* was against the effects of *A*, and only applied to such property as *B* was in possession of at that time; and that, as it had been sold to realize the demands of Government, the decree did not apply to the villages. This decision was reversed on appeal, the Judicial Committee holding, first, that the suit was properly instituted for recovery of the sale-proceeds in possession of Government, as the decree obtained by *C* against *B* operated as a conversion of the estate of *A*, making it assets in *B*'s hands, which *C* had a right to follow; secondly, that as the Government had notice of *C*'s equitable charge upon the villages, and suppressed that fact at the auction-sale to the purchasers, there was a clear equity in *C* to call upon the Government for payment out of the auction-proceeds received by them, and an account was directed of the amount received by the Collector from the sale of the villages with interest, so far as the amount received would extend to the payment of *C*'s mortgage-debt. *Semble*—Where property is sold by Government for general debts and not for arrears of revenue, they sell only the interest of the debtor, and do not guarantee the vendor's title. DOUGLAS v. COLLECTOR OF BENARES.

[5 Moore's I. A., 271

8. SETTING ASIDE SALE.

(*a*) IRREGULARITY.

97. ———— **Irregularity in conduct of sale**—*Act XI of 1859, ss. 25, 26, 27-33—Substantial injury—Form of petition—Remedy by suit.*—The object of the Revenue Sale Law (XI of 1859) is to give a title to the purchaser which shall not be open to challenge by anybody; and the only ground on which a revenue sale can be set aside is (s. 25) that of irregularity in conducting the sale, in which case the Commissioner can set it aside on a petition of appeal presented to him within fifteen days of the sale. The petition may disclose a case of hardship or injustice where irregularity does not exist, as, for instance, that the sale has taken place where no arrear is due, and under such circumstances the Government, under s. 26, may set aside the sale. If the Commissioner will not interfere, the party aggrieved may, within one year of the sale becoming conclusive (s. 27), bring an action in the Civil Court under s. 33, and the Court may set aside the sale on proof of irregularity and substantial injury caused thereby. If no irregularity producing substantial injury is proved, the Civil Court cannot entertain an action to set aside a sale for arrears, and the only course open to an injured party is by a suit for damages as provided for in s. 33. WOMESH CHUNDER CHATTERJEE v. COLLECTOR OF 24-PERGUNNAHS. WOOMESH CHUNDER CHATTERJEE v. ISHARUTOOLLAH

[8 W. R., 439

98. ———— **Omission to give notice of sale**—*Act IX of 1859, s. 33—Material injury—Setting aside sale, Ground for.*—To sell an estate for arrears under Act XI of 1859, after lulling the

SALE FOR ARREARS OF REVENUE —*continued*

8 SETTING ASIDE SALE—*continued*

proprietor into a false security by failure to give him a notice which the law prescribes as a condition precedent of a sale is of itself a very material injury irrespective of the amount of purchase money realized and one amply sufficient to warrant a Court in annulling the sale under s 33 MOHABEER PERSHAD SINGH v COLLECTOR OF TIRHOOT

[15 W R, 137

99 ———— **Omission to serve notice on minor defaulter**—*Madras Revenue Recovery Act (II of 1864) ss 25 27—Mad Reg V of 1804 s 20*—A mitta consisting of an unsurveyed village of which the plaintiffs (minors) were the registered proprietors of an undivided moiety was brought to sale for arrears of kist and was purchased for the plaintiffs by their guardian duly appointed under Reg V of 1804 s 20 The sale was

The sale took place in September and defendant No 2 became the purchaser It was admitted that a division of the village was impracticable In a suit by the plaintiffs by their mother and next friend to set aside the sale—*Held* since service of a demand upon the defaulter is an essential preliminary to sale the sale was invalid so far as the share of the plaintiffs was concerned and the sale as a whole was vitiated by the irregularity MEKAPER UMA v COLLECTOR OF SALEM

[I L R, 12 Mad, 445

100 ———— **Irregularity in issue of notice**—*Ground for setting aside sale—Damage to defaulter*—A sale under Act XI of 1859 may not be set aside on the ground of irregularity in the issue of notices unless such irregularity is shown to have caused loss or damage to the defaulter LULEETA KOOER v COLLECTOR OF TIRHOOT

[19 W R, 283

the estates or shares of estates and the number they bear in the Collector's office AMIRUNISSA KHATOON v SECRETARY OF STATE FOR INDIA

[I L R, 10 Calc, 63

S C AMIRUNNESSA KHATOON v BROWNE

[13 C L R, 131

ZERKALEE KOOER v LALLA DOORGA PERSHAD

[16 W R, 149

102 ———— **Sale Notification**—*Act XI of 1859 s 6—Description— Residue of an estate*—In a notification of sale under Act XI of 1859 the share of an estate intended to be put up for sale must be so described that there can be no mistake about it Merely advertising that the residue of an estate is to be sold without giving further particulars and stating what that residue is cannot be considered to be a sufficient description ANNADA CHARAN MUKHUTI v KISHORI MOHON RAI

[2 C W N, 479

103 ———— **Notification of sale, Omission in**—*Revenue paying estate—Sale of share of an estate—Recorded proprietors—Omission of names of proprietors—Irregularity—Act XI of 1859 ss 6 33*—When a notification of sale of a share in a revenue paying estate is issued under s 6 Act XI of 1859 the circumstance that such notification does not contain the names of all the recorded proprietors of the share but only the name of one of them does not amount to an irregularity within the meaning of s 33 Act XI of 1859 SECRETARY OF STATE FOR INDIA v RASHBEHARY MOOKERJEE

[I L R, 9 Calc, 591 12 C L R, 27

Collector under s 6 of Act XI of 1859 fixing the 31st May 1879 as the date for holding the sale was affixed in the places mentioned in the section on the 2nd May 1879
certained
Sunday t
of the Act
postponing the sale till the 2nd June On that

Act had not been affixed thirty days before the day fixed by it for holding the same the requirements of that section had not been fulfilled and the irregularity was not cured by the notification of the 26th May *Held* further that the Court was not bound under s 8 of Bengal Act VII of 1868 to presume conclusively that the provisions of s 6 of Act XI of 1859 as regards the fixing of the date of sale had been complied with Under s 8 of Bengal Act VII of 1868 the effect of a certificate of title having been given to the purchaser is merely that the Court is bound to presume conclusively the due service and posting of notices BAL MOKOOND LALL v JIRJUDHUN ROY

I L R, 9 Calc, 271

S C BUL MOKUND LAL v TRIJOODHUN ROY

[11 C L R, 466

105 ———————— *Material irregularity—Substantial injury—Act XI of 1859, ss 6 7, 20 28 33—Certificate—Beng Act VII of 1868 s 8*—*Per* GARTH C J MITTER PRINSEP and PIGOT JJ—A non compliance with the provisions of s 6 Act XI of 1859 is not a mere irregularity and is not one of those errors in procedure which are

[illegible]

SALE FOR ARREARS OF REVENUE
—continued

8 SETTING ASIDE SALE—continued

Co urt canno cancel the sale unless such substantial injury has been established The words except as otherwise is hereinafter provided" which occur in cl (1) of s 33 refer to the action which the Collector is empowered to take *suo motu* under cl (3) of the same section and have no relation to the remedy provided by s 59 Direct evidence is not necessary to connect inadequacy of price realized with a material irregularity, where the latter has been proved and the relation of cause and effect between the two may be inferred where such inference is reasonable But where the only irregularity shown was an omission to display the notice of sale in the Collector's office and there was no evidence to show that this affected the attendance of buyers at a place many miles distant where the sale actually took place the inadequacy of price being susceptible of other explanation —*Held* that it was not shown that the irregularity referred to had caused substantial loss and that there was therefore no ground for setting the sale aside BOMMAYYA NAIDU v. CHIDAMBARAM CHETTIAR

[I L R, 22 Mad, 440

112 ——— *Act XI of 1859, s 5—Attachment by order of Civil Court—Latest day of payment, Attachment subsequent to* —In a suit to set aside the sale of an estate for arrears of revenue one of the grounds taken by the plaintiff was that the estate which was under attachment by an order of the Civil Court at the time of the sale was sold without due observance of the formalities prescribed by s 5 Act XI of 1859 The date fixed for payment of the arrears for which the estate was sold was the 7th June 1893 The date of attachment was nd August following *Held* that s 5 of Act XI of 1859 provides for cases in which the attachment has been made at least fifteen days before the last date of payment for which it is sought to bring the estate to sale That section would not therefore apply to a case like the present in which the attachment was after the last day of payment and after the estate had become liable to sale for arrears of Government revenue *Bunwari Lall Sahu* v *Mohabir Persad Singh 12 B L R, 297 L R 1 I A 89* referred to NOWNIT LAL v RADHA KRISTO BHUTTACHARJEE

[I L R, 22 Calc, 738

113 ——— *Bombay Land Revenue Code (Bom Act V of 1879), ss 56 57, 150 and 153—Confirmation of sale by Collector—Omission of Collector to make—Declaration of forfeiture before sale* —A sale of a holding for

fact that a sale has taken place is *primâ facie* evidence that forfeiture had been declared GANPATI v GANGARAM I L R, 21 Bom, 381

SALE FOR ARREARS OF REVENUE
—continued

8 SETTING ASIDE SALE—continued

114 ——— Irregularity in refusing fine for non attendance, tendered by proprietors—*Act XI of 1859—Procedure—Beng Act VII of 1868—Fine for non attendance of proprietors before Collector in partition proceedings under Beng Reg XIX of 1814* —In sales held by the Collector for the realization of Government demands realizable as arrears of revenue the procedure laid down in Bengal Act VII of 1868 is to be followed Therefore where a fine had been imposed for non attendance of proprietors before a Deputy Collector for the purpose of a partition under Regulation XIX of 1814 and the amount had been ordered to be paid on a given day but was not so paid but tendered subsequently,—*Held* that the Collector ought not to have sold the property of the defaulters He was bound to receive the amount tendered MOHAN RAM JHA v SHIB DUTT SING

[8 B L R, 230 17 W R, 21

115 ——— Irregularity in not accepting highest bid—*Obligation of Collector to sell to highest bidder* —At a sale for default of payment of Government revenue, the Collector is bound to sell to the highest bidder even though (as in this case) that bidder be the husband of the person in arrear CORNELL v OODOY TARA CHOWDHRAIN

[8 W. R., 372

(b) OTHER GROUNDS

116 ——— Fraud—*Act XI of 1859, ss 6, 7, 18—Ground for setting aside sale* —In a suit to set aside a sale for arrears of Government revenue held on the 26th March 1879 it was alleged as grounds for setting the sale aside (1) that the arrears had been paid into the Collector's treasury on the previous day and a receipt granted for them and

and 7 of Act XI of 1859 were not served according to law and (3) that the purchaser at the sale had dissuaded other persons from bidding as alleged *Held* that the sale was valid as no order had been made by the Collector in writing exempting the property from sale under s 18 of Act XI of 1859, mere payment of arrears into the treasury without an order under s 18 not having in itself the effect of that I of pay such

that it was no fraud for persons at a sale for arrears of revenue to combine not to bid against each other

SALE FOR ARREARS OF REVENUE *—continued.*

8. SETTING ASIDE SALE—*continued.*

See *Bal Mokoond Lall* v. *Jirjudhun Roy, I. L. R., 9 Calc., 271 : 11 C. L. R., 466.* GOBIND CHUNDRA GANGOPADHYA v. SHERAJUNNISSA BIBI [13 C. L. R., 1

117. ——— *Act X of 1876, 4—Jurisdiction of Civil Court—Fraud of officers conducting sale.*—S. 4, cl. (c), of Act X of 1876 excepts from the jurisdiction of the Civil Court claims to set aside, on account of irregularity, mistake, or any other ground except fraud, sales for arrears of land revenue. *Quære*—Whether the exception of fraud in the above enactment is confined to fraud on the part of officers conducting sales for arrears of land revenue. BALKRISHNA VASUDEV v. MADHAVRAV NARAYAN . I. L. R., 5 Bom., 73

118. ——— *Act XI of 1859, s. 33.*—S. 33 of Act XI of 1859 should not be read as meaning that under no possible circumstances can a suit be brought to set aside a sale on the ground of fraud. AMIRUNNESSA KHATOON v. SECRETARY OF STATE FOR INDIA IN COUNCIL [I. L. R., 10 Calc., 63

S. C. AMIRUNNESSA KHATOON v. BROWNE [13 C. L. R., 131

119. ——— *Beng. Act VII of 1868—Sale improperly conducted.*—In a suit by a mortgagee for possession of the mortgaged property which had been sold under Bengal Act VII of 1868, where plaintiff alleged that the sale was brought about by fraudulent withholding of the rents, and that the mortgagor had purchased it benami,—*Held* that, where a sale has been held under the provisions of Bengal Act VII of 1868, but improperly and irregularly, it can only be questioned by a suit brought within proper time and against proper parties. RAJ LUKHEE DASSEE v. PEARUN BIBEE 23 W. R., 82

120. ——— *Bidders, Dissuasion of.*—In a suit by some of the co-sharers in a mouzah against the others to set aside a sale for arrears of revenue, the finding of the Court of first instance established that a certain co-sharer in a mouzah had intentionally withheld the payment of a small arrear of Government revenue, and had thereby caused the property to be sold under Act XI of 1859, purchasing it himself at a small sum in the name of certain other persons; and had also dissuaded certain intending bidders from bidding at such sale. *Held* that the evidence did not warrant such a finding, but that, assuming these facts to have been established, the right of the co-sharer to buy up the estate at the revenue-sale was not based upon any right of interest common to himself and his co-sharers, and that, in the absence of misrepresentation or concealment, the fact that he had intentionally defaulted as found, did not constitute fraud; nor did the fact that he had deterred others from bidding for the property, necessarily constitute an act of fraud. *Bhoobun Chunder Sen* v. *Ram Soonder Surma Mozoomdar, I. L. R., 3 Calc., 300,* distinguished. DOORGA SINGH v. SHEO PERSHAD SINGH [I. L. R., 16 Calc., 194

121. ——— *Sale without attachment—Attachment of property sold, not necessary—Sale ultra vires—Act XI of 1859, ss. 5, 17.*—The right to set aside a sale for arrears of Government revenue under Act XI of 1859 is not confined to proprietors alone, but extends to all persons, such as mortgagees, having an interest in the property antecedent to its sale. *Watson* v. *Sreemunt Lal Khan, 5 Moore's I. A., 447,* relied on. There is nothing in s. 5 of Act XI of 1859 which indicates that property sold for arrears of Government revenue should be under attachment at the time of sale. A sale in contravention of ss. 5 and 17 of Act XI of 1859 is *ultra vires* and therefore void. The principle laid down by the Full Bench in the case of *Lala Mobaruk Lal* v. *Secretary of State for India in Council, I. L. R., 11 Calc., 200,* applied. GOBIND LAL ROY v. BIPRODAS ROY [I. L. R., 17 Calc., 398

122. ——— *Act XI of 1859 (Bengal Revenue Sale Law), ss. 3, 8, and 33—Bengal Excise Act (Beng. Act VII of 1868), s. 2—Unauthorized sale by Collector—Jurisdiction of Civil Court.*—Act XI of 1859, the Bengal Revenue Sale law, providing for the sale of estates in arrear of payment of revenue, does not sanction, and by plain implication forbids, the sale of any estate which is not at the time in arrear of such payment. The whole clauses, in so far as they relate to sales, or to their challenge, as well as the provisions of Bengal Act VII of 1868, are framed upon the express footing that they are to be applicable to the sale of estates which are in arrear of duty. A Collector had sold an estate, purporting to act under Act XI of 1859, for a supposed arrear of revenue. There was, however, only an erroneous debit in the Collectorate books against the estate, in excess of the revenue actually assessed upon it, chargeable against it, and due from it. *Held* that the sale was without authority; that the Civil Court had jurisdiction to declare the sale void; and that the provisions of s. 33 of Act XI of 1859, relating to an appeal to the Commissioner of Revenue, did not exclude that jurisdiction. The enactment in s. 8 had no application to such a case. This was not a question about a transfer from the account of one revenue-paying estate to that of another, nor was it a claim for remission or abatement, which had not been duly allowed by the Government. S. 8 has no application, except there be (1) default in payment of the revenue, and (2) possession by the Collector of money of the defaulter not indisputably placed to his credit. But here there was no default. All moneys paid by the appellants were credited, and their alleged default was based upon erroneous debit entries to which they were not parties. BALKISHEN DAS v. SIMPSON . . I. L. R., 25 Calc., 833
L. R., 25 I. A., 151
2 C. W. N., 513

SALE FOR ARREARS OF REVENUE
—continued

8 SETTING ASIDE SALE—*continued*

123 ———— Sale where no arrears due —*Bona fide purchase* —The sale of an estate for arrears of revenue where no such arrears exist is null and void even though it is regularly conducted and the purchase is made *bonâ fide* SREEMUNT LALL GHOSE *v* SHAMA SOONDUREE DASSEE [12 W R, 276

RAM GOBIND ROY *v* KUSHUFFUDOZA [15 W R., 141

See BAIJNATH SAHU *v* LALLA SITAL PRASAD [2 B L R, F B, 1 10 W R, F B, 66

and HARKHOO SINGH *v* BUNSIDHUR SINGH [I L R., 25 Calc, 876

124 ———— *Act XI of 1859* —Where there has been a sale under Act XI of 1859 for arrears of revenue but it is found that no revenue is actually due to Government the sale must be set aside as not coming within the provisions of the Act MANGINA KHATUN *v* COLLECTOR OF JESSORE 3 B L R., Ap, 144 12 W R, 311

125 ———— *Suit to set aside sale—Sanction of Commissioner* —A suit to set aside a sale for arrears of revenue on the ground that no arrears were due may be brought without previous sanction of the Commissioner THAKOOR CHURN POY *v* COLLECTOR OF 24 PERGUNNAHS [13 W R 336

126 ———— *Act XI of 1859 s 5—Act XI of 1838—Suit to set aside sale—Costs of partition—Sanction of Board of Revenue—Beng Reg XIX of 1814* —On 12th June 1867 some of the proprietors of an estate applied to the Collector for a partition under Regulation XIX of

stance of s 4 Regulation XIX of 1814 In it was a column giving the shares into which the expenses of the partition were to be divided On the same day a notice was issued to the proprietors ordering them to pay their respective quotas of the

proclamation should be issued in accordance with paragraph 4 of s 5 of Act XI of 1859 directing the plaintiffs as defaulters in two sums of R252 3 2 and R9 9 6 to pay the Government revenue On the 28th March such proclamation was issued accordingly Subsequently one of the plaintiffs came in and offered to pay all that was then due and outstanding His application was rejected and on the same day the 8th April the sale proceeded and the whole interest of the plaintiffs was sold for R16 900 The plaintiffs appealed to the Commissioner, but their appeal was dismissed The plaintiffs therefore brought a suit against the purchasers and the Collector for the recovery of the property and for cancelment of the sale *Held* that the sale was void There was no arrear of Government revenue justifying a sale under Acts XI of 1838 and XI of 1859 s 5 There could be no arrear until demand after sanction by the Board of Revenue and by the Lieutenant Governor of the estimate of expenses prepared by the Collector and fixed by the Commissioner The Board must give its sanction in each case and the defendants failed to show that it had done so But even if the Commissioner had power finally to determine the amount and date of payment it was not shown that he had done so or supposing that he had that any fresh demand had been made upon the parties liable HAR GOPAL DAS *v* RAM GOLAM SAHI [5 B L R, 135 13 W R., 381

127 ———— Unauthorized sale by Collector—*Want of sanction—Subsequent confirmation—Accounts—Costs* —The sale by a Collector of a whole talukh in one lot for arrears of revenue without specific authority previously conferred by the

priation of the surplus proceeds of the money by the defaulting proprietor The proprietor's acquiescence in a sale made, as he believed by the authority of the Board of Revenue did not give legal efficacy to a sale altogether void for the want of such authority, or bar his claim to annul the sale on that ground. The Courts below, without entering into any investigation of the profits made by the purchaser during his occupation of the estate assumed that he had reimbursed himself the amount of the purchase-money and interest out of the profits of the estate The Privy Council however saw no ground for such an assumption and directed that an account should be taken of the principal and interest due to the purchaser in respect of the purchase money paid by him and also of the net profits made by him out of the estate during his occupation and that on payment to him of whatever may appear due to him on taking such account possession of the talukh should be delivered to the proprietor The Privy Council further, acquitting the purchaser of all blame in the transaction reversed so much of the decrees of the Courts below as condemned him in costs and ordered each party to bear his own costs in all the Courts MITTERJEET SINGH *v* HEIRS OF THE WIDOW OF JUSWUNT SINGH [6 W R., P C, 15 3 Moore's I A, 42

128 ———— Sale for arrears of revenue of mitta held by tenants in common during minority of some of the owners —*Mad Reg X of 1831 ss 1 2 3—Mad Reg V of 1804, s 14 (4) s 20* —A mitta held by tenants in common was sold for arrears of revenue

at a time when the owners of a moiety thereof were minors. In a suit brought by the mother of these minors on their behalf against the Collector to set aside the sale, the District Court held that Regulation X of 1831, s. 2, absolutely debarred the Collector from selling the estate of the minors during their minority and set aside the sale so far as their interests were concerned. *Held* on appeal that, the minors not being sole proprietors, their estate was not one of which the Court of Wards could assume the management, and therefore s. 2 of Regulation X of 1831 did not affect the sale. KRISHNA *v.* MEKAMPERUMA. COLLECTOR OF SALEM *v.* MEKAMPERUMA

[I. L. R., 10 Mad., 44

129. ———— **Payment of arrear of revenue through post office**—*Act XI of 1859, s. 2—Payment by postal money-order.*—Where the revenue of an estate was sent through the post office by a money-order in sufficient time, but it did not, owing to the negligence of the post office, reach the Collector in due time and the estate was sold for arrears of revenue,—*Held* that the sale was rightly held Payment to the post office is not equivalent to payment to the Collector, and the post office cannot be considered as the agent of the Collector. BAIKANTHA NATH DUTT *v.* GUNGA PROSAD PUTNAYAK . . . . 4 C. W. N., 103

130. ———— **Collector's order of exemption**—*Act XI of 1859, ss. 18, 33.*—A Collector's order under s. 18 of Act XI of 1859 for exempting an estate from sale for arrears of revenue must be an absolute exemption, and not an order having effect as an exemption or not, according to what may happen, or be done, afterwards. It must not depend on an act which may, or may not, be performed. The High Court having set aside a sale, as contrary to the provisions of Act XI of 1859, upon a ground other than that declared and specified in an appeal made to the Commissioner of Revenue against the order for the sale, the Judicial Committee, referring to s. 33 as prohibiting such a course, reversed the decision of the High Court. LALA GAURI SANKER LAL *v.* JANKI PERSHAD I. L. R., 17 Calc., 809

[L. R., 17 I. A., 57

131. ———— **Exemption from sale of land under attachment by Collector**—*Act XI of 1859, ss. 17, 25, 33—Beng. Act VII of 1868—Suit to set aside sale—Bengal Cess Act (Beng. Act IX of 1880)—Omission to specify ground of objection in revenue appeal.*—An estate sold for arrears of revenue had been previously brought to a judicial sale by a mortgagee, whose charge preceded that of a puisne incumbrancer, whom the present plaintiffs represented. It was not the consequence of the execution-sale that puisne incumbrancers, who were not parties to the prior mortgagee's suit, were displaced, or left with nothing but a claim against the surplus proceeds of the sale, if any; and on the facts, the present plaintiffs had a mortgagee's interest in the estate sold by the Collector, entitling them to sue to have the sale for default in payment of revenue set aside, as contrary to Act XI of 1859. A sale for arrears of revenue, if for arrears which have accrued while the land has been subject to an order issued by the Collector under the Cess Act (Bengal Act IX of 1880), for the levy of road cess in arrear, is contrary to s. 17 of Act XI of 1859, such an order being an attachment within the meaning of that section. But under s. 33 of that Act, in every case where a sale for arrears of revenue is impeached, as being contrary to the provisions of Act XI of 1859, no grounds of objection are open to the plaintiff which have not been declared and specified in an appeal to the Commissioner under s. 25. The above provision in s. 33 applies where the sale has been irregularly conducted, and also where the sale has been illegal in consequence of an express provision for exemption of the land from sale for arrears having been contravened. *Lala Gauri Sanker Lal* v. *Janki Pershad, I. L. R., 17 Calc., 809: L. R., 17 I. A., 57,* referred to. GOBIND LAL ROY *v.* RAMJANAM MISSER

[I. L. R., 21 Calc., 70

L. R., 20 I. A., 165

132. ———— **Sunset law**—*Beng. Act VII of 1868, s. 11—Revenue Sale Law (Act XI of 1859), s. 6.*—S. 11 of Bengal Act VII of 1868 makes the sunset law as enacted in s. 6 of Act XI of 1859 applicable to sales of tenures under the former Act The refusal, therefore, of the Collector to accept payment of the amount due when tendered after sunset on the latest day for payment does not make the sale under Bengal Act VII of 1868 illegal. AZIMUDDIN PATWARI *v.* SECRETARY OF STATE FOR INDIA . I. L. R., 21 Calc., 360

133. ———— **Payment of arrears before sale without obtaining exemption from sale**—*Act XI of 1859, ss. 6, 13, 14, and 33—Proceedings when share of estate is not sold at auction-sale—Ground for annulling sale not declared and specified in appeal to Commissioner.*—The plaintiffs and defendants were sharers in a certain estate, the plaintiffs being owners of a joint share, and the defendants the owners of other shares, in respect of which separate accounts had been opened in the Collector's register. The plaintiffs in March 1890 made default in the payment of Government revenue for their share, and it was advertised to be put up for sale on the 18th September 1890, under ss. 6 and 13 of Act XI of 1859, for recovery of the amount due, R18-6. On the 16th September the plaintiff paid into the treasury of the Collectorate the amount of arrears due, and made an application that the joint share might be exempted from sale; receipts were given for the amount paid in, but no order was made on the application and the share was not exempted from sale. On the 16th September the joint share was put up for sale, but there being no bids the sale was postponed, and on the same day the Collector made an order under s. 14 of Act XI of 1859 that, unless the arrears were paid by the other sharers (the defendants) within ten days, the whole estate

SALE FOR ARREARS OF REVENUE —*continued*

8 SETTING ASIDE SALE—*continued*

would be put up for sale Notices of this order, provided for by a rule made under the Act by the Board of Revenue were given to the serving peon on the 2nd October for service on the defendants and the arrears were paid in by some of the defendants on the 4th and by others on the 7th October and eventually the Collector acting under s 14 of the Act granted on the 5th December 1890 a certificate of purchase and gave delivery of possession to the defendants The plaintiffs appealed to the Com

mesne profits —*Held* by PETHERAM C J and BEVERLEY J (AMEER ALI J dissenting) that the Collector not having exempted the share from sale the payment by the plaintiff of the arrears on the 16th September was no bar to the proceedings taken under s 14 of the Act *Held* also that the defendants purchase was not made invalid by the fact of

latter objection as it was not declared and specified in their grounds of appeal to the Commissioner in accordance with s 33 of the Act *Gobind Lal Roy* v *Ramjanam Misser I L R 21 Calc 70*

share themselves when it was put up for sale on the 18th September *Per* BEVERLEY J Under s 6 of the Act the sale if it had taken place on the 18th September would have conveyed a good title to the defendants and under s 14 they are expressly declared to have the same rights as if the share had been purchased by them at the sale' *Per* AMEER ALI, J—The proceedings provided for by s 14 do not apply

the sale

Collector

sale conte

Privy Council in *Gobind Lal Roy* v *Ramjanam Misser I L R, 21 Calc 70* is a public sale held at a place prescribed by the proper authorities at which there are bidders and a possibility of competition GOSSAIN CHUTTURBHOOJ DUT v ISHRI MUL I L R. 21 Calc., 844

134. ——— Benami purchase for de

SALE FOR ARREARS OF REVENUE —*continued*

8 SETTING ASIDE SALE—*concluded*

135 ——— Fraudulent purchase by judgment debtor—*Act XI of 1859—Right of decree holder*—In a suit to recover possession of a

said right title and interest LALLA JUGGESSUR SAHOY v GOPAL LALL 15 W R, 54

136 ——— Failure of consideration—*Suit to set aside sale and recover purchase money on the ground that subject of sale was alluvial land and practically non existent*—An estate does not necessarily mean land but may denote julkur phul

Muddun Mohun Thakoor 13 Moore I A 467, be sold as an estate A suit therefore by a purchaser of such an estate to have the sale set aside and recover his purchase money on the ground that the subject of his purchase was non existent at the time of sale and had since remained so was held to be not maintainable GOVERNMENT v RADHAY SINGH [20 W R, 117

137 ——— Award of compensation to purchaser—*Sale set side under Beng Reg I of 1821*—A sale in 1802 of lands for arrears of Government revenue was set aside by the mofussil and sudder commissions constituted under Bengal Regulation I of 1821 although no suit was brought to annul the sale until 1821 and the decision was affirmed by the Judicial Committee But the sale having taken place by direction of the Government

S C DEEP NARAIN SINGH v LAL CHUTTERPUT SINGH 6 W R, P C, 27

9 MISCELLANEOUS CASES

138 ——— Act XI of 1859, s 5—*Effect of notification under Act—Attachment*—A notification issued under s 5 Act XI of 1859 is simply a public call on the debtor to pay his debt by a fixed date it does not operate as an attachment by the Civil Court NURKOO RAM v RAMJOORAWUN SINGH 9 W R., 481

SALE FOR ARREARS OF REVENUE —*concluded.*

9. MISCELLANEOUS CASES—*concluded.*

139. ———— Transfer of tenure from one Collectorate to another—*Payment of revenue—Notice of transfer.*—If a tenure is transferred from one Collectorate to another, and the holder of the tenure, after receiving notice of the transfer, continues to pay his revenue into the former Collectorate, he is not entitled to take credit for such payment. But if he pays before notice and obtains a receipt, such receipt is a quittance as against Government. THAKOOR CHURN ROY *v.* COLLECTOR OF 24-PERGUNNAHS . . . **13 W. R., 336**

140. ———— **Act XI of 1859, s. 31**—*Recorded proprietor, Representative of—Execution of decree—Purchaser in execution of decree—Revenue sale—Deposit—Assignee.*—S. 31 of Act XI of 1859 must be read strictly. An assignee of the recorded proprietors is not their representative within the meaning of that section, and the Collector is justified in refusing to pay to such assignee, claiming on his own behalf, money held in deposit on account of the recorded proprietors. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* MARJUM HOSEIN KHAN **[I. L. R., 11 Calc., 359**

SALE FOR ARREARS OF ROAD CESS.

See BENGAL CESS ACT, 1871, s. 3. **[I. L. R., 12 Calc., 430**

See BENGAL CESS ACT, 1880, s. 47. **[I. L. R., 24 Calc., 27**

See BENGAL TENANCY ACT, s. 65. **[I. L. R., 21 Calc., 722**

See LIMITATION ACT, 1877, ART. 12. **[I. L. R., 23 Calc., 775**
L. R., 23 I. A., 45

See PUBLIC DEMANDS RECOVERY ACT, s. 2. **[I. L. R., 14 Calc., 1**
I. L. R., 23 Calc., 641

See PUBLIC DEMANDS RECOVERY ACT, s. 7. **[I. L. R., 23 Calc., 775**
L. R., 23 I. A., 45

SALE IN EXECUTION OF CERTIFICATE UNDER BENGAL ACT VII OF 1880.

See CASES UNDER PUBLIC DEMANDS RECOVERY ACT.

SALE IN EXECUTION OF DECREE.

Col.

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2. PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER 8186
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[I L R, 3 Bom, 214, 217
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[I. L R, 1 All., 772

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See TRANSFER OF PROPERTY ACT

1 PLACE OF SALE

1 ———— Place of holding the sale—*Sale of moveable property in execution of decree—Practice*—Under the Code of Civil Procedure (Act XIV of 1882), it is intended that a sale of moveable property attached in execution of a decree should ordinarily be held in some place within the jurisdiction of the Court ordering the sale Good and sufficient reasons must be shown for directing otherwise Where the only ground urged for directing a sale outside the Court's jurisdiction was that the property would probably fetch a better price, and it was found by the Court that a fair sale could be had on the spot —*Held* that no sufficient reason was shown for departing from the usual practice LAKSHMIBAI *v.* SANTAPA REVAPA SHINTRE
[I. L R, 13 Bom., 22

2 PERSON SELLING PROPERTY OF WHICH HE IS NOT, BUT AFTERWARDS BECOMES, OWNER

2 ———— Obligation to make good the sale out of subsequently acquired interest—*Vendor and purchaser*—The doctrine—that where a person [illegible]

does not apply to a case where the sale was made through the Court at the instance of an execution creditor, and was therefore compulsory ALUKMONEE DABEE *v* BANEE MADHUB CHUCKERBUTTY
[I L. R, 4 Calc, 677 3 C L R. 473

3 OBJECTION TO SALE

3 ———— Dispossession of third party in execution—*Resistance or obstruction by stranger on delivery to auction purchaser—Civil Procedure Code, 1859 s 269*—There was no provision in the Civil Procedure Code, 1877, similar to that contained

SALE IN EXECUTION OF DECREE
—*continued.*

3. OBJECTION TO SALE—*concluded.*

in s. 269 of Act VIII of 1859, which enabled the Court executing a decree to inquire into a complaint made by a person other than the defendant, on the ground of dispossession in the delivery of possession to the purchaser of immoveable property sold in execution of a decree; and therefore the only remedy of a person so dispossessed was by regular suit. *A*, a decree-holder, purchased certain property belonging to *B*, his judgment-debtor, at a sale, in execution of his decree, and delivery of possession to him was ordered. A stranger to the suit thereupon presented a petition to the Court executing the decree, setting up a title to a moiety of the property in question, and prayed for an investigation into his right, and for recovery of possession, on the ground that he had been dispossessed by *A*. *Held* that the application could not be maintained. HARASATOOLLAH *v.* BROJONATH GHOSE

[I. L. R., 3 Calc., 729 : 1 C. L. R., 517

This omission is now rectified, and under the Civil Procedure Code, 1882, the Court has power to make an inquiry on the application of a third party dispossessed in execution.

4. ———— **Decree, Impeachment of, by a stranger as fraudulent**—*Civil Procedure Code (Act XIV of 1882), s. 287.*—In the execution of a decree ordering the sale of immoveable property, it is not competent for the Court to refuse to sell it because a stranger to the suit in which such decree was obtained, who is in possession of such property, impeaches the decree as having been obtained by fraud; the course open to him, if he wishes stay of execution, being to file a suit and obtain an injunction for that purpose. PURSHOTTAM VITHAL *v.* PURSHOTTAM ISWAR . I. L. R., 8 Bom., 532

4. STAY OF SALE.

5. ———— **Stay of sale in regard to a particular property**—*Other property of judgment-debtor.*—To save a particular property from sale, a judgment-debtor must show the value and condition of other properties in her possession, and the Judge must consider how and by what arrangement such a disposal of different portions of such property may be made so as to avoid the sale of the property already attached. DEB KUMARI BIBEE *v.* RAM LALL MOOKERJEE . 3 B. L. R., Ap., 107 : 12 W. R., 66

6. ———— **Stay of sale pending administration suit** — *Mortgage decree—Right of secured creditor.*—In execution of a decree on a mortgage-bond executed by the father of the judgment-debtors, since deceased, which decree directed that the mortgage-lien should be enforced, first, by sale of the property specifically mortgaged; and, secondly, if the debt remained unsatisfied by the sale of the other property in the possession of the judgment-debtors, the judgment-creditor proceeded to have the property sold. After issue of the sale notification, one of the judgment-debtors applied for stay of the sale, on the ground that an administration suit was pending with respect to the property of his father, the mortgagor, and also asked that a receiver be appointed and arrangements made for paying off the mortgage-debt and saving the property from sale. *Held* that the Court was wrong in passing such order, inasmuch as there were no reasonable grounds why a secured creditor should be debarred from enforcing his security pending the administration suit. KRISTOMOHINY DOSSEE *v.* BAMA CHURN NAG CHOWDRY

[I. L. R., 7 Calc., 733 : 9 C. L. R., 344

7. ———— **Tender of debt by transferee of property**—*Civil Procedure Code, s. 291.*—*Held* that the assignees of a purchaser from a judgment-debtor of property, the subject-matter of a decree for enforcement of hypothecation, were entitled to come in and protect the property from sale in execution of the decree by tendering the debt and costs under s. 291 of the Civil Procedure Code, and that the executing Court was bound to accept the money and stop the sale. BEHARI LAL *v.* GANPAT

[I. L. R., 10 All., 1

8. ———— **Civil Procedure Code, ss. 276, 305.**—S. 305 of the Civil Procedure Code (which enables the Court in certain cases to stay the sale of immoveable property to enable the debtor to raise the amount of the decree by mortgage, lease, or private sale of the property) contemplates a mortgage or lease or private sale only where "the amount of the decree can be thus provided for. A Court executing a decree can neither grant a certificate under this section, nor confirm a mortgage or other alienation of property, unless it appears that by such alienation the decree will be satisfied in full. It is not sufficient that after grant of certificate a mortgage by the judgment-debtor is, as between him and his mortgagee, *bonâ fide*, nor can it affect the lien acquired by the judgment-creditor under s. 276. GURUSAMI *v.* VENKATSAMI . I. L. R., 14 Mad., 277

5. IMMOVEABLE PROPERTY.

9. ———— **Interest in decree against mortgaged property**—*Civil Procedure Code, 1859, s. 259—Sale of decree—Interest in immoveable property.*—A decree for the sale of mortgaged property was attached and sold in execution of a decree. *Held* that the interest in immoveable property thereunder conveyed to the purchaser was immoveable property within the meaning of s. 259 of Act VIII of 1859, and that certificate of sale ought to have been granted to the purchaser. HARI GOVIND JOSHI *v.* RAMCHANDRA PANDURANG JOSHI

[9 Bom., 64

10. ———— *Decree creating charge on land—Interest in immoveable property.*—The sale of a decree charging land for its satisfaction in the course of execution-proceedings against the judgment-creditor is a sale of an interest in immoveable property. *Held* that the provisions of the Code of Civil Procedure relating to sales of immoveable

SALE IN EXECUTION OF DECREE
—*continued*

5 IMMOVEABLE PROPERTY—*concluded*

property will apply to such sale BHAWANI KUAR v GHULAB RAI I L R, 1 All, 348

MOBKOONISSA v DEWAN ALI MISTREE [4 W R, Mis, 22

6 BIDDERS

11 ——— Withdrawal of bid—*Civil Procedure Code s 290*—It is competent to a bidder at a Court auction sale to withdraw his bid AGRA BANK v HAMLIN I L R, 14 Mad, 235

7 PURCHASERS RIGHTS OF

(*a*) GENERALLY

See CASES UNDER ACCRETION—RIGHT OF PURCHASERS TO ACCRETIONS

12 ——— What passes by sale—*Sale under money decree—Right title and interest of judgment debtor.*—Nothing passes to the auction purchaser at a sale in execution of a money decree but the right title and interest of the judgment debtor at the time of the sale AKHE RAM v NAND KISHORE I L R, 1 All, 236

KHUB CHAND v KALIAN DAS [I L R, 1 All, 240

BARTON v BRIJONATH SURMAH 3 W R, 65

RAM ONOOGROHO SINGH v MONTORUN [6 W R., 223

SETH OODEY KURRUN v CHAIT RAM [2 Agra, 125

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ZALIM v CHOONEE LALL 3 Agra, 194

BHUKAN BHAIRAVA v BHAIJI PRAG 1 Bom., 19

13 ——— *Sale under Bom Reg IV of 1827—Right title and interest of judgment debtor*—All that passed under a Court's sale under Bombay Regulation IV of 1827 was the right title and interest of the judgment debtor whose property was proclaimed for sale KUSHABA BIN SANKROJI v PITAMBARDHARI 12 Bom, 15

14 ——— *Property sold with specification—Rights of judgment debtor*—

that s ... sale and is conveyed there appearing no provisions in the Procedure Code to contemplate the sale or transfer of anything more than the right and interest of the judgment debtor, and the auction purchaser at a sale in execution acquires by the express terms of the conveyance to him, not the presumed title of the person in possession or the apparent title in the Collector's books.

SALE IN EXECUTION OF DECREE
—*continued*

7 PURCHASERS RIGHTS OF—*continued*

but the right title and interest of the judgment debtor in the property sold MAHOMED BUKSH v MAHOMED HOSSEIN

[3 Agra, 171 Agra, F B, Ed 1874, 145

See BALUK DOSS v NIMAYE CHUNDER SIRCAR [17 W R, 511

15 ——— *Description of property in specification under s 237 of Civil Procedure Code on application for attachment—Execution against joint family property*—The specification required by s 237 of the Civil Procedure

hold unless something to the contrary appeared that the sale was of that share and interest only MUHAMMAD HUSAIN v DIP CHAND

[I L R, 14 All, 190

16 ——— *Sale of rights and interests in mouzah consisting of two mehals—Submersion of mehal at time of sale—Sale certificate not specifically mentioning submerged mehal—Passing of rights in submerged mehal to purchaser*—The rights and interests of certain judgment debtors in a mouzah consisting of two separate mehals respectively known as the Uparwar mehal and the

necessary and contingent right to any lands which

No 818 of 1885 referred to *Fida Husain* v *Kutab*

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

Husain, I. L. R., 7 All., 38, dissented from. MUHAMMAD ABDUL KADIR v. KUTUB HUSAIN. KUMAL-UD-DIN AHMAD v. KUTUB HUSAIN [I. L. R., 9 All., 136

17. ——— *Increase of judgment-debtor's interest occurring after attachment and before sale.*—Previously to a mortgage of it, a fractional interest in certain property (which interest was purchased by the plaintiff, the mortgagee at a judicial sale) had been the subject of a settlement by a Mahomedan on his wife under the conditions that, if he should have no child by her, his two sons by another wife should each have an estate therein. He died without other children. *Held* that the two sons had taken definite interests capable of being attached within s. 266 of the Civil Procedure Code, not being mere expectancies. *Held* that a judicial sale of property, purporting to be of all the interest of a judgment-debtor, carries with it any enlargement thereof that may have occurred after the attachment and before the sale; and that accordingly the above-mentioned settlor having died without a child by that wife, between the date of the attachment and the sale, the sons' augmented interests passed thereby. UMES CHUNDER SIRCAR v. ZAHUR FATIMA . . . I. L. R., 18 Calc., 164 [L. R., 17 I. A., 201

18. ——— *Civil Procedure Code (Act XIV of 1882), s. 274, cl. (c)—Rights of purchaser of mortgage-bond at sale in execution of decree.*—Where a person at an execution-sale purchases a mortgage-bond under which certain immoveable property is given as collateral security for an advance, the fact that he has not attached under s. 274 of the Code will not affect his right to have the collateral security enforced by the sale of the properties mortgaged. KASINATH DAS v. SADASIV PATNAIK . I. L. R., 20 Calc., 805

19. ——— *Sale of raiyat's interest—Want of zamindar's consent to alienate.*—An auction-purchaser of a raiyat's right and interest in his house in a village could not acquire more title than could have been transferred by private sale, and therefore if by the village custom the raiyat cannot alienate the house with the zamindar's consent, and such consent has not been obtained, the sale in execution conveys no rights in it to the purchaser. SHIB LALL v. LOCHUN SINGH . 3 Agra, Rev., 7

20. ——— *Sale of specified share—Property coming to debtor before sale.*—When there was a sale of a specified share belonging to the judgment-debtor,—*Held* that the auction-purchaser was not entitled to claim property which had before sale descended to the judgment-debtor. AZADEE v. AJMEER KOONWER . 1 Agra, 282

21. ——— *Interest in purchase-money—Civil Procedure Code, 1877, s. 266—Property not subject to attachment and sale.*—The purchaser at a sale in execution of a decree of the right or interest which the vendor of immoveable property has in the purchase-money, where it has been agreed that the same shall be paid on the execution of the conveyance, takes nothing by his purchase, such interest not being subject to attachment and sale under s. 266, Civil Procedure Code, 1877. AHMAD-UDDIN KHAN v. MAJLIS RAI I. L. R., 3 All., 12

22. ——— *Right to mesne profits—Civil Procedure Code (Act VIII of 1859), s. 259—Certificate of sale.*—The possession, with mesne profits, of land comprised in a zur-i-peshgi lease of the year 1851 was decreed to the zur-i-peshgidars in 1860; and litigation as to their rights under the lease was carried on till 1874, when, after their deaths, it ended in favour of their representatives. In 1869 one of the parties to that litigation obtained a decree for money against the zur-i-peshgidars; and in 1874, in execution of this decree, all the right, title, and interest of the representatives of the latter in the lease of 1851 was sold to a third party. *Held* (reversing the decision of the High Court) that the right to the mesne profits awarded by the decree of 1860 did not pass by the sale, but remained in the representatives. GANESH LALL TEWARI v. SHAMNARAIN . . . I. L. R., 6 Calc., 213

23. ——— *Life-interest in property of testator.*—A life-interest in the residue of the real and personal property of a testator, after all the charges upon it have been satisfied and provided for, and after a full administration has taken place of the assets for the purpose of discharging these several dispositions, cannot be sold under an execution issued in the Supreme Court against the property of the testator. The sale therefore passes nothing to the purchaser. TOKAI SHEROR v. DAUOD MULLICK FUREEDOON EEGLAR [4 W. R., P. C., 87: 6 Moore's I. A., 510

24. ——— *Sale of legacy under writ against executor.*—A seizure and sale by the Sheriff of the amount of a legacy under a writ against the executor, declared invalid in the absence of proof of payment extinguishing the legatee's interest. LAZAR v. COLLA RAGAVA CHETTY [5 W. R., P. C., 126: 2 Moore's I. A., 83

25. ——— *Right and interest of proprietor of resumed revenue-paying estate.*—By a sale in execution of the rights and interests of a judgment-debtor as recorded proprietor of a Government resumed revenue-paying estate, released rent-free lands lying in the estate do not pass to the purchaser. DOL GOBINDMONY DEBIA v. IMDAD ALI . . . . . . 5 W. R., 170

26. ——— *"Right, title, and interest" of a judgment-debtor in a partly-executed decree—Possession of land attached under Beng. Reg. V of 1812, s. 26.*—A decree of the year 1843 awarded to persons, afterwards represented by the respondents, the possession of a moiety of a talukh which had been since 1837, and remained till 1866, under attachment by the Collector in virtue of an order made under Regulation V of 1812. The Court

SALE IN EXECUTION OF DECREE —*continued.*

7 PURCHASERS, RIGHTS OF—*continued.*

which granted the decree, intending to execute it' approved the proceedings of an Ameen purporting to put the decree-holders into constructive possession of a certain number of mouzahs of the talukh In 1850 the appellants, in execution of a decree for money obtained by them against the respondents, purchased at a sale, amongst other things, their "right, title, and interest" in the decree of 1843 *Held* (affirm-

[illegible]

decree of 1843 had been so far executed, and that what was acquired by the appellants at the execution sale was only the unexecuted portion of the decree of 1843. GRISHCHUNDER CHUCKERBUTTY *v* JIBANESWARI DABIA GRISHCHUNDER CHUKERBUTTY *v* BISESWARI DEBIA

[I. L. R., 6 Calc, 243: 7 C. L R, 420

27. ———— *Sale of right, title, and interest of zamindar—Impartible primogenitary zamindari—Interest taken by purchaser* —In 1873 and 1876, portions of an impartible primogenitary zamindari, which were in the possession of a lessee from the zamindar, were attached and brought to sale in execution of decrees against the zamindar The purchase money was very inadequate as the price of the full ownership of the property (subject to the lease), but what was sold according

[illegible]

28. ———— *Sale of rights of deceased debtor whose representatives hold certifi-*

[illegible]

does not acquire the entire estate, but acquires it subject to all legal and equitable rights of inheritance. SHAM COOMAR ROY *v* JUTTUN BIBEE

[14 W. R., 448

RAJKRISTO SINGH *v*. BUNGSHEE MOHUN

[14 W. R., 448 note

29. ———— *Sale of zamindari rights—Building appurtenant to zamindari rights* —The "rights and interests" of a zamindar in a certain village were sold in execution of a decree At the time of the sale a certain building was his property *quâ* zamindar *Held* that, in the absence of

[illegible]

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

30. ———— *Sale of house and lands to different purchasers—Decree-holder, Purchase of land by, and sale of house to, third person* —Where a decree holder who had attached certain land and a house upon it caused the land to be sold in execution and purchased it, and then caused the house to be sold to a third party,—*Held* that he had purchased the land on which the house stood, subject to the right of the person who bought the house to have it continued there. MOOKTA SOONDUREE CHOWDHRAIN *v* MUTHOORANATH GHOSE . . . 22 W. R., 209

31. ———— *Sale of property with incumbrances—Right, title, and interest of debtor* —The purchaser at a Court's sale buys only the right, title, and interest of the debtor, burdened with all valid liens such as a previous mortgage *Mathuradas Ranchoddas* v *Kalia Khushal, 7 Bom, A C, 24,* and *Chintaman Bhaskar* v. *Shivram Hari, 9 Bom., 304,* followed RANCHODDAS DAYALDAS *v*. RANCHODDAS NANABHAI

[I. L. R., 1 Bom., 581

32. ———— *Interest adverse to judgment-debtor—Effect of sale—Incumbrances by debtor after attachment* —Under an execution sale, the purchaser, notwithstanding that he acquires merely the right, title, and interest of the judgment-debtor, acquires that title, by operation of law, adversely to the judgment-debtor, and freed from all the alienations and incumbrances effected by him after the attachment of the property sold DINENDRONATH SANNIAL *v* RAMKUMAR GHOSE TARAKCHANDRA BHUTTACHARJEE *v* BAIKANTNATH SANNIAL . I. L R, 7 Calc, 107: 10 C L. R., 281

[L. R., 8 I. A., 65

BHUGOBAN CHUNDER DOSS *v* LALLA THAKOOR PERSHAD . . . . W. R., 1864, 359

33. ———— *Sale free of decree holder's interest—Reservation of rights* —

[illegible]

[illegible] . 24 W R., 2[illegible]

See DULLAB SIRKAR *v* KRISHNA KUMAR BAKSH

[3 B L R., 407: 12 W. R., 303

34 ———— *Prior right of former purchaser at unconfirmed sale—Laches* —The purchaser at a Court's sale buys only the then existing right, title, and interest of the judgment-debtor, and therefore ordinarily takes, subject to the

[illegible]

laches on the part of the first purchaser, or by other special circumstances KONAPA BIN MAHADAPA *v* JANARDAN SUKDEV . . . 11 Bom., 193

SALE IN EXECUTION OF DECREE —*continued.*

7. PURCHASERS, RIGHTS OF—*continued.*

35. ———— Effect of sale—*Right of purchaser as compared with purchaser by private sale—Right as against charges on estate sold.*—A purchaser at a judicial sale is in a position different from that of a mere representative of the old proprietor, or of one who comes in by a voluntary sale made by the latter. A judicial sale transfers to the purchaser the property of the judgment-debtor against the debtor's will, and places the purchaser in a higher position than that which the judgment-debtor, by any private alienation, could confer on him. Such a purchaser is competent to defend his possession and title by showing that the charge which it is sought to establish against the estate is fraudulent and collusive, and therefore void. OOMRAO SINGH *v.* SHIMBOO NATH . . . . . 2 N. W., 38

36. ———— *Purchase subject to decree for sale—Incumbrance.*—A decree-holder having attached certain property in the execution of a decree, *R* appeared as an objector. The decree-holder was referred to a civil suit, and obtained a decree for the sale of the property in satisfaction of the former judgment-debt. *A* then sued the judgment-debtor for the return of certain alleged consideration-money and obtained a decree, in execution of which he brought to sale and became purchaser of the same property of which the sale had been decreed as above mentioned. *Held* that *N* could only purchase the property subject to the decree for sale, and that the transactions subsequent to that decree had no effect to shake it off. NIRUNJUN RAI *v.* RUJJOO RAI . . . . 5 N. W., 166

See SOORAJ BUKSH *v.* RAMJEEAWUN [4 N. W., 5

37. ———— *Fraudulent alienations before decree.*—An auction-purchaser can question the fraudulent acts and alienations of the old proprietor in fraud of the decree. BAICHOO *v.* HOWARD . . . . . . 3 Agra, 15

DEWAN ROY *v.* RIDDELL . . 9 W R., 521

38. ———— *Fraudulent award, Right of purchaser to contradict.* — The *locum tenens* of a purchaser at a sale in execution of a decree is not bound by an award in fraud of the decree to which the judgment-debtors were parties. ALFATUN *v.* RAO KARAN SINGH . 7 N. W., 362

39. ———— *Right of purchaser to set aside deeds.*—There is no authority for the proposition that the purchaser at a sale in execution of a decree of the right, title, and interest of the judgment-debtor acquires by that purchase not merely the right, title, and interest of the judgment-debtor, but any right which the judgment-creditor might have to set aside or question the validity of any deed which had been previously made, even it might be by the judgment-debtor himself. LALLA RAM SURUN LALL *v.* LOKEBAS KOOER [18 W. R., 39

40. ———— *Right to set aside patni—Mortgage—Covenant not to alienate.*—*A* gave a mortgage to *B* of certain property as a security for money lent, and covenanted not to alienate the property by gift, ijara, patni, or otherwise, by which loss might be caused to the existing actual assets of the property. *A* subsequently granted a patni to *C*. *B* obtained a decree against *A* for the amount of the loan, and the property was sold in default of payment. *D* was the purchaser at the auction-sale. *Held* that *D* could maintain his suit against *C* to set aside the patni and for possession. BRAJARAJ KISORI DASI *v.* MOHAMMED SALEM . . . 1 B. L. R., A. C., 152

S. C. BROJO KISHOREE DOSSIA *v.* MAHOMED SULEEM . . . . . 10 W. R., 151

(*b*) EASEMENTS.

41. ———— Right to easements.—The rule that the right to easements goes with the property when sold by the owner himself, applies also when the property is sold by the Court in execution of a decree against him. HUREE MADHUB LAHIREE *v.* HEM CHUNDER GOSSAMEE . 22 W. R., 522

(*c*) EMBLEMENTS.

42. ———— Right to emblements—*Mortgage, Sale under.*—On the 14th of July 1876, *B* obtained a decree against *D* directing *D* to pay the amount advanced upon a mortgage of *D*'s lands within six months from the date of decree, or, in default of payment, the lands to be sold with liberty to *B* to bid at the sale. Default having been made, the lands were sold on the 21st of June 1877, and *B* became the purchaser. At the time of the sale the lands were in the occupation of *D*'s tenants under an agreement to give to *D* a moiety of the crops. On the 11th December 1877 *P*, another judgment-creditor of *D*, attached the crops on those lands which had been cut and stored by *D*'s tenants since the date of the sale. *Held* that by the sale to *B* all right, title, and interest of *D*, including his right to the moiety of the crops in the hands of his tenants, passed to *B*, and no residual right remained in *D* on which *P*'s execution could operate, the crops not having been actually carried away and appropriated by *D*. LAND MORTGAGE BANK OF INDIA *v.* VISHNU GOVIND PATANKAR . . . I. L. R., 2 Bom., 670

43. ———— *Crop standing on land sold in execution of a decree obtained by a mortgagee in possession.*—A mortgagee in possession sued on his mortgage, and having obtained a decree brought the land to sale in execution: and the execution-purchaser was placed in possession. *Held* the mortgagee was not entitled to recover from the execution-purchaser the value of the then standing crop. RAMALINGA *v.* SAMIAPPA . I. L. R., 13 Mad., 15

(*d*) RENT.

44. ———— Right to rents—*Rents paid for former proprietor after sale—Notice of title*

SALE IN EXECUTION OF DECREE
—*continued*

7. PURCHASERS, RIGHTS OF—*continued*

of purchaser —The purchaser of a zamindari sold in execution of a decree is entitled to all the rents accruing due from the date of his purchase, and if the tenants or raiyats, after having had notice of his title, choose to continue to pay their rents to, or for the use of, the former proprietor, they do so at their peril, and cannot plead such payments in answer to a suit for rent by the new owner COLLECTOR OF RAJSHAHYE *v* HURSOONDERY DEBIA
[W. R , 1864, Act X, 6

45 ———— Apportionment of rents—*Purchaser of share of estate* —A purchase at a sale in execution of a decree of one of several estates let in one patni is not bound by any agreement between the patnidar and other zamindars regarding their shares of the entire patni rent Nor can he claim from the patnidar as his own share of the patni rent a sum bearing the same proportion to the whole patni rent as the sudder jumma bears to the sudder jumma of all the estates let out in patni In order to obtain redress in such a case either the patnidar or one or all of the zamindars may have their fixed patni rent properly apportioned among the several zamindars by a civil suit in which all the zamindars should be parties PORESH NATH ROY *v* BISHROOP DUTT
[W R , 1864, Act X, 16

(*e*) REVERSIONARY INTEREST

46. ———— Reversionary right of grantor—*Property liable to attachment and sale —Grant to Hindu widow for maintenance for life —Act VIII of 1859, s 205—Civil Procedure Code, s. 266 (k)* —One *N*, the sole owner of a certain [illegible] s By his first wife was *G*, by [illegible] *K*, the defendant in the suit [illegible] died leaving *U* his son, *G* his widow, and *K* his son's widow, and on his death *U* inherited the village Prior to the year 1874, *U* had made a gift to *G* of 105 bighas situate in the village. In 1874 the rights and interests of *U* [illegible]

the gift and for possession of the land The learned Judge found that the land was given to *G* in lieu of [illegible]

[illegible] that the interest of *U* in the land at the time of the sale of the village by auction was in the nature of a mere expectancy and therefore could not be sold and was not sold *Held* that *U* gave to *G* the usufruct of the land for her life in lieu of her maintenance, that after the gift the interest of *U* in the land was of the same character and carried with it the same consequences as the

SALE IN EXECUTION OF DECREE
—*continued*

7 PURCHASERS, RIGHTS OF—*concluded.*

reversion, which the lessor would have for land leased for life or years and analogous to the right which a [illegible]

Koonwar v. Komul Koonwar, 6 W R , 34, Ram Chunder Tantra Das v Dharmo Narain Chukarbatty, 7 B L. R , 341 15 W. R , F B , 17, Tuffuzzool Husain Khan v Raghunath Pershad, 7 B L. R , 186 14 Moore's I A , 40, distinguished. KACHWAIN *v* SARUP CHAND
[I. L. R., 10 All , 462

(*f*) STRIDHAN

47 ———— Malabar Law—*Personal decree against karnavan—Civil Procedure Code, s 335* —*A* sued for possession of certain shops belonging to a Malabar tarwad, which had been attached in execution of a personal decree passed against a karnavan in a suit for a private debt In the execution proceedings, an objection petition was put in, stating that the shops were stridhanam and was rejected, and the order of rejection was not appealed against for one year. Respondents Nos 1 to 4, the husbands of the persons who put in the objection petition, were [illegible]

[illegible] [I. L. R., 10 Mad., [illegible]

8 ERRORS IN DESCRIPTION OF PROPERTY SOLD

48 ———— Subject of purchase—*Certificate of sale, Description in—Obligation of purchaser to see that certificate is correct* —It is the business of an auction purchaser to see that the sale certificate conveys to him what he supposes himself to have purchased, and it is not open to him to adduce evidence afterwards to prove that he purchased anything more than the certificate shows him to have taken under the sale PEAREE MOHUN MOOKERJEE *v* GOSTO BEHARY DEY . 26 W. R , 104

49. ———— *Certificate of sale more extensive than decree—Right of purchaser.* —Where a decree holder obtains an order for the sale [illegible]

50 ———— Subject of sale—*Discrepancy between notification of sale and sale certificate—Right of purchaser* —Where on an execution sale there is a discrepancy between the conditions in the notification of what is to be sold and the certificate of what has been sold, the conditions in the notification are to be taken as of superior authority in

SALE IN EXECUTION OF DECREE —*continued.*

8. ERRORS IN DESCRIPTION OF PROPERTY SOLD—*continued.*

dealing with the conflicting claims of innocent third parties whose rights are affected by the variation. In execution of a decree for arrears of rent, an application was made for a sale of the tenure for the arrears of which the decree had been obtained. A notification was issued purporting to be a sale proclamation under Act VIII of 1859, s. 249, and in pursuance of that notification the sale of the right, title, and interest of the judgment-debtor took place. *Held* that the tenure did not pass by that sale, notwithstanding that the sale certificate stated it was the tenure itself which had been sold. UMA CHURN SEN *v.* GOBIND CHUNDER MOZUMDAR [1 C. L. R., 460

51. ———— *Misdescription of tenure sold—Right of purchaser.*—*A*, in satisfaction of a decree against *B*, caused the sale of a tenure, styling it a jote-jumma. *C*, the superior zamindar, purchased the tenure as such for R900; but failing to pay the balance of the purchase-money, the tenure with the same description was re-sold, and purchased by *C* for one rupee. *A*, on discovering his mistake in having advertised the property as a jote-jumma, when in fact it was a shamilat talukh (a more permanent and valuable holding), caused a sale of *B*'s rights and interests in the shamilat talukh, and, having purchased them himself, was put into possession. *A* then sued for rent under Act X of 1859, when *C* intervened as in enjoyment of the rent, and *A*'s suit was dismissed. In a suit by *A* to establish his right to the shamilat talukh,—*Held* that *A* was entitled to succeed, as he had acted *bonâ fide*, and that *C* could not be considered an innocent purchaser for a valuable consideration, but a purely speculative purchaser, as he must have known that no such tenure as that which he purchased under the denomination of jote-jumma had any real existence. HURO NATH ROY *v.* MOTHOORA NATH ACHARJEE [7 W. R., 4

52. ———— *Description in notification of sale—Sale under mortgage-decree—Vendor and purchaser.*—The proprietors of a talukh and mehal called B, assessed with revenue at R6,800-4-7, to which certain lands which had been gained by alluvion appertained, which lands had been formed into a separate mehal and assessed with revenue at R88, mortgaged it in these terms: "We agree mutually to mortgage the said talukh B, and accordingly after mortgaging and hypothecating the whole of the mouzahs original and appended, yielding a jumma of R6,800-4-7, along with all original and appended rights, water and forest produce, high and low lands, cultivated and uncultivated lands, etc., etc., and all and every portion of our proprietary, possessory, and demandable rights, without excepting any right or interest obtained or obtainable, etc." Subsequently, the mehal talukh B, "together with original and attached mehal and all the zamindari rights appertaining thereto," was sold in the execution of a decree enforcing the mortgage. The auction-purchaser subsequently contracted to sell the "entire talukh B, jumma R6,800-4-7," but afterwards refused to perform the contract, and was sued for its specific performance. The plaint in this suit stated that the subject-matter of the contract was the "entire talukh B, jumma R6,800-4-7," and the decree which the purchasers obtained for the specific performance of the contract referred to its subject-matter in similar terms. *Held* in a suit by the purchasers for the possession of the alluvial mehal, that the terms of the mortgage were sufficiently comprehensive to include that mehal, and it was not intended by the entry of the jumma of mehal B, exclusive of the jumma of the alluvial mehal, to exclude the latter from the mortgage, the entry of the jumma being merely descriptive. Also that the alluvial mehal passed to the auction-purchaser at the auction-sale, under the words "attached mehal." Also that the sale to the plaintiffs passed the alluvial mehal, the words "the entire talukh B" being sufficient to include it, the entry of the jumma of mehal B in the sale contract, plaint, and decree being merely descriptive. GANPATJI *v.* SAADAT ALI [I. L. R., 2 All., 787

9. JOINT PROPERTY.

53. ———— **Sale of joint property as if separate**—*Effect of sale—Right taken by purchaser.*—Under a sale in execution of a decree no property can be sold except that which belongs to the defendants in the suit. Accordingly, if under a decree in a suit against *A* alone, for a debt for which *B* is jointly liable, an estate be sold in which *B* is entitled to an equal share with *A*, the interest of *A* alone is acquired by the purchaser. KISHEN CHUNDER GHOSE *v.* ASHOORUN . . Marsh., 647

SREEPERSHAD SURMAH BHUTTACHARJEE *v.* SHUROOPA DOSSIA . . . . 9 W. R., 452

54. ———— **Sole right of member of joint Hindu family in undivided property**—*Decree in suit for damages for tort—Costs.*—There may be a valid sale upon an execution in an action of damages for a tort, of the share of undivided family property to which, if a partition took place, a judgment-debtor would be individually entitled. Such damages in the costs recovered constitute a judgment-debt, in respect of which the judgment-creditor's rights are the same as those upon any other judgment for payment of money. VIRASVAMI GRAMINI *v.* AYYASVAMI GRAMINI . 1 Mad., 471

55. ———— **Partnership property**—*Sale-decree against one of several partners in mercantile firm—Right against partnership property.*—A suit was brought by *C* against "*A*, as manager of a firm and also against the firm itself;" and a decree was passed accordingly. *A* was one of two partners in the firm. The other partner (*B*) was not named in the plaint. In execution of the decree, the right, title, and interest of *A* in a stable, which in fact belonged to the firm, was sold to the plaintiff. In a suit brought by the plaintiff against *B*, the other

SALE IN EXECUTION OF DECREE —continued

9 JOINT PROPERTY—continued

partner in the firm to recover possession of the property—*Held* that the plaintiff was in no better position than a purchaser at a sale of partnership pro-

cerns of the firm and claim that interest in the property which upon a final settlement might be ascertained to belong to his judgment debtor KALYANBHAI *v* MOTIRAM JAMNADAS 10 Bom 378

See KESHAV GOPAL GINDE *v* RAYAPA [12 Bom, 165

56 ———— Property of co parceners—*Share of one of several co parceners—Undivided Hindu family—Unascertained share Purchase of*—In the Bombay Presidency the share of one of the co parceners in a Hindu undivided family in the ancestral estate may before partition be seized and sold in execution for the separate debt in his lifetime The purchaser of such an unascertained share cannot before partition insist on the possession of any particular portion of the undivided family estate and he takes any such share subject to the prior charges or incumbrances affecting the family estate or that particular share The attachment of a co parcener's share in the family property under an ordinary money decree should go against the share right title and interest of the judgment debtor in such parts of the family property (naming and describing them) as the judgment-creditor can specify and against the share right title and interest in all other parts of the family property UDARAM SITARAM *v* RANU PANDUJI 11 Bom, 76

57 ———— *Attachment and sale of the interest of one of several co parceners in the undivided estate—Mortgage by one co parcener*—In 1848 two members of an undivided family mortgaged some land forming a portion of the ancestral estate The mortgagee having obtained a decree in 1856 on his mortgage caused 20 guntas of the mortgaged land to be attached and sold on account of the right and interest of one of the mortgagors only on 24th January 1871 In a suit brought by the purchaser against a third member of the un

1848 PANDURANG ANANDRAV *v* BHASKAR SHADASHIV 11 Bom, 72

58 ———— Property of joint tenants—*Share in joint family property—Family dwelling house—Service rents—Right of purchaser*—Where the interest of one of several joint tenants in a family dwelling house and in certain lands let out on service tenure is sold in execution the purchaser is entitled to joint possession of the dwelling house with the other shareholders and also to a right to share in the service rents *Kowar Bijoi Kesal Roy* v *Sama sundari B L R Sup Vol 172 2 W R, Mis 30*, commented on RAJANIKANTH BISWAS *v* RAM NATH NEOGY I L R, 10 Calc 244

See ESHAN CHUNDER BANERJEE *v* NUND COOMAR BANERJEE 8 W R, 239

59 ———— Property of joint tenure holders—*Decree against one of several joint sharers—Effect of sale under such decree*—In execution of a decree against one of several joint holders of a tenure when it is clear that what is sold and intended to be sold is the interest of the judgment-

appears that the judgment debtor has been sued as representing the ownership of the whole tenure and

and not to the form or language of the proceedings JEO LAL SINGH *v* GUNGA PERSHAD [I L R, 10 Calc, 996

See NITAYI BEHARI SAHA PARAMANICK *v* HARI GOVINDA SAHA I L R, 26 Calc, 677

and ANUNDA KUMER NASKAR *v* HARI DASS HALDAR I L R, 27 Calc, 545

60 ———— Property of joint family—*Suit to set aside sale—Refund of purchase money*—The sale of joint property governed by the Mitak

61 ———— *Personal decree against karnavan of tarwad—Right of purchaser*

made *bona fide* and for value is not material ELAYACHANIDATHIL KOMBI ACHEN *v* KENATUMKORA LAKSHMI AMMA I L R, 5 Mad, 201

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

62. ———— *Right of minor brother—Sale advertisement under decree against entire property* — A minor brother's share in a joint family estate was held not liable under a sale advertisement which referred solely to the rights and interests of his elder brothers who did not represent him, though the decree was against the entire property. RAM LOCHUN SHAHA *v.* UNNO POORNA DOSSEE . . . . . . **7 W. R., 144**

NETYE ROY *v.* ODEET ROY . **10 W. R., 241**

63. ———— *Mortgage for legal necessity by managing brother of joint family —Sale in execution of decree obtained against mortgagor alone—Rights of purchaser and other member of joint family.*—*A*, the managing member of a joint Hindu family governed by the Mitakshara law, for joint family purposes and legal necessity mortgaged the joint family property. The mortgagee subsequently sued *A* alone upon the mortgage, obtained a decree, and had the property comprised in the mortgage put up for sale. *B*, a brother of *A*'s, who was no party to the mortgage or to the suit thereon, resisted the purchaser at the auction-sale in his endeavour to get possession. In a suit by the purchaser against *B* and *A*,—*Held* that *B*'s interest in the joint family property was unaffected by the decree passed in the mortgage suit, and that the purchaser was not entitled to the relief he sought as regards his share. *Subramaniyayyan* v. *Subramaniyayyan, I. L. R., 5 Mad., 125,* followed ABILAK ROY *v.* RUBBI ROY . **I. L. R., 11 Calc., 293**

64. ———— *Purchase by decree-holder of family property in execution of decree against member of joint family—Effect of sale—Right of purchaser.*—The property of an undivided Hindu family consisting of brothers having been hypothecated by one brother was sold in execution of a decree obtained against him alone upon the hypothecation bond and purchased by the decree-holder. *Held,* in a suit by another brother to recover his share of the property sold, that the purchaser was only entitled to the interest of the judgment-debtor in the property sold, and could not be permitted to prove that the debt for which the property was sold was contracted for family purposes by the manager of the family. ARMUGAM *v.* SABAPATHI

[**I. L. R., 5 Mad., 12**

65. ———— In an undivided Hindu family consisting of two brothers, the elder, while managing the property during the minority of the younger, executed a mortgage of family property in renewal of a former mortgage, executed by his deceased father as security for moneys lent for purposes neither immoral nor illegal. The mortgagee, having sued the elder brother upon this mortgage, brought to sale and purchased the property mortgaged. The younger having brought a suit for partition against the elder brother and the alienee of the mortgagee and purchaser at the Court sale,—*Held* (TURNER, *C.J.*, and KERNAN, *J.*, dissenting) that the plaintiff was entitled to recover his share of the property without paying his share of the mortgage debt, and that it was immaterial whether or not the mortgage was executed to discharge a prior mortgage debt of the father. SUBRAMANIYAYYAN *v.* SUBRAMANIYAYYAN . . . **I. L. R., 5 Mad., 125**

66. ———— *Execution of decree against one brother—Rights of other brothers.*—*J* purchased a 10 biswas share in a village, and *Y* purchased a village, both of which properties were, at the time they were respectively purchased, mortgaged to secure one debt. *J* died leaving four sons. After *J*'s death, *Y*, whose village had been sold in execution of a decree for the sale of the mortgaged property, sued *R*, eldest son of *J*, for rateable contribution in respect of the debt secured by the mortgage, and he obtained a decree for R210 and costs, and directing the 10 biswas share to be sold in satisfaction of the decretal amount. Upon attachment of the share in execution of the decree, the three younger sons of *J* claimed 7½ biswas as belonging to them, and prayed that the same might be released from attachment. This objection was disallowed as made too late, and the sale in execution of the decree took place The sale certificate showed that the property sold was "the rights and interests" of *R* in the 10 biswas The three younger sons of *J* subsequently brought a suit to establish their right to 7½ biswas out of the 10 and to set aside the sale to that extent. *Held* that the shares of the plaintiffs were unaffected by the sale, and all that passed thereunder to the purchaser was the 2½ biswas share of the judgment-debtor The plaintiffs were not bound by the decree in a suit to which they were not parties, and by a sale to which they objected, and in the teeth of the terms of the sale certificate put forward to defeat them. SUNDAR LAL *v.* YAKUB ALI . **I. L. R., 6 All., 362**

67. ———— *Property of Hindu judgment-debtor—Right of purchaser.*—*Held* that the property in the hands of a Hindu judgment-debtor was liable to sale in the same way and to the same extent as would the other immoveale property of a Hindu having sons be liable: and that the question of the extent of the right to be sold should have been left an open question for adjudication in a suit between purchasers and other persons claiming right therein. BULDEO SINGH *v.* DWARKA DASS . . **1 Agra, 169**

68. ———— *Sale of ancestral family property in execution of decree against father—Delay in impeaching sale.*—A son's interest may pass on a sale of ancestral property in execution of a money-decree against his father, but whether it does or does not pass will have to be determined by the circumstances of each case. Delay in bringing proceedings to impeach sales is a matter for consideration in determining what interests pass on the sale. BASO KOER *v.* HURRY DASS . **I. L. R., 9 Calc., 495 : 12 C. L. R., 292**

69. ———— *Son's interest in joint ancestral property—Sale of right, title,*

SALE IN EXECUTION OF DECREE
—*continued*

9 JOINT PROPERTY—*continued*

and interest of father —The sale of the right, title, and interest of a father in ancestral property, in execution of a decree for a debt incurred by him, passes as well the right title and interest of the son where the debt was not incurred for an immoral purpose and where the purchaser has inquired whether there was a decree against the father, and that the property was properly liable to process and sale in satisfaction of the decree and has purchased the estate *bona fide* under the execution and *bona fide* paid a valuable consideration for it In determining whether the sale passed the right title, and interest of the son the nature of the debt and not the nature of the property must be considered Unless it can be shown that the debt was incurred for an immoral purpose the question as to the nature of the debt must be held to be determined against the son by there having been a decree against the father, and his right title and interest in the family property PANDIT HAIT RAM *v* MULU

[7 N W, 110

70 ———— *Right of father of joint Hindu Mitakshara family —Suit by sons to set aside sale* —In execution of a simple money decree against the father of the plaintiffs who were members of a joint Mitakshara family, the right title, and interest of the judgment debtor in certain joint immoveable property was sold in 873 and the purchasers took possession of the whole property In 1878 the plaintiffs sued to recover their shares in such property on the ground that only the share of their father had legally passed to the purchasers *Held* that the plaintiffs were entitled to succeed BHAGWAT DASSA *v* GOURI KUNWAR

[7 C L R, 218

7[illegible]

Mitakshara law mortgaged a certain mouzah M, portion of the joint family property by a bond containing the following clause I have pledged [illegible]

[illegible] debtor as set out in the proclamation of sale was sold *Held* that the mortgagor must be taken to [illegible]

STUDD *v* BRIJ NUNDUN PERSHAD SINGH

[9 C L. R, 350

72 ———— *Attachment of family property in execution of decree against Hindu father Sale limited to interest of father on objection by sons—Right acquired by purchaser* —In execution of a personal decree obtained against the father of an undivided Hindu family and one of his sons the creditor attached the family estate The two remaining sons objected by petition, to the attachment of their shares and the Court directed that the sale should be confined to the right title and interest of the judgment debtors The creditor having purchased at the sale obtained possession of the whole estate *Held* that the right title and interest of the father purchased by the creditor was only a right to obtain the share of that judgment debtor by partition SUBAYYAN *v* RUPPA NAGASAMI AYYAN I L R., 6 Mad, 155

73. ———— *Money decree against father—Attachment of sons' shares* — In a suit brought against the father of a Hindu family and his eldest son, on a bond executed by the former, by which family property was hypothecated as security for the repayment of the debt a decree was [illegible]

against their father —*Held* that so far as the younger sons were co[illegible] decree for [illegible] that could be [illegible] the father [illegible] WARA *v* SIN[illegible]

74 ———— *Impartible zamindari—Money decree against zamindar—Attachment and sale of estate—Suit by son to recover after father's death —Right of purchaser* — In execution of a money decree obtained against the holder of an impartible zamindari, the creditor attached certain immoveable property—portion of the zamindari which he described as the property of the debtor This was sold by the Court and purchased by *L* A suit having been brought by the son of the judgment-debtor after his father's death to recover the property from *L*,—*Held* that all that *L* acquired was the life interest of the judgment-debtor in the property and therefore the plaintiff was entitled to recover SIVAGANGA *v* LAKSHMANA

[I L R, 9 Mad, 188

75 ———— *Joint Hindu family—Sale of ancestral estate in execution of decree against father—Effect of sale on son's rights and interests* —When a decree has been made against the father and manager of a joint Hindu family in reference to a transaction by which he has professed to charge or sell the joint ancestral property, and a sale has taken place in execution of such decree of the joint ancestral property, without

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

debt incurred for immoral purposes of the kind mentioned by *Yajnavalkya*, Ch. II, s. 48, and *Manu*, Ch. VIII, sloka 159, and one which it would not be their pious duty as sons to discharge. If, however, the decree, from the form of the suit, the character of the debt recovered by it, and its terms, is to be interpreted as a decree against the father alone and personal to himself, and all that is put up and sold thereunder in execution is his right and interest in the joint ancestral estate, then the auction-purchaser acquires no more than that right and interest,—*i.e.*, the right to demand partition to the extent of the father's share. In this last-mentioned case, the co-oparceners can successfully resist any attempt on the part of the auction-purchaser to obtain possession of the whole of the joint ancestral estate, or, if he obtains possession, may maintain a suit for ejectment to the extent of their shares upon the basis of the terms of the decree obtained against the father and the limited nature of the rights passed by the sale thereunder. *Girdharee Lall* v. *Kantoo Lall, 14 B. L. R., 187; Deendyal Lall* v. *Jugdeep Narain Singh, I. L. R., 3 Calc., 198; Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L. R., 5 Calc., 148; Bissessur Lall Sahoo* v. *Luchmessur Singh, L. R., 6 I. A., 233; Muttayan Chetti* v *Sangili Vira Pandia Chinnatambiar, I. L R., 6 Mad., 1; Hurdi Narain Sahu* v. *Rooder Perkash Misser, I. L. R., 10 Calc., 626; Nanomi Babuasin* v. *Modun Mohun, I. L. R., 13 Calc., 21; Ram Narain Lal* v. *Bhawani Prasad, I. L. R., 3 All., 443; Gaura* v. *Nanak Chand, Weekly Notes, All., 1883, p. 194: Weekly Notes, All., 1884, p. 23; Appovier* v. *Rama Subba Aiyan, 11 Moore's I. A., 75; Phul Chand* v. *Man Singh, I. L. R., 4 All., 309; Chamaili Kuar* v. *Ram Prasad, I. L. R., 2 All., 267;* and *Rama Nand Singh* v. *Gobind Singh, I. L. R., 5 All., 384,* referred to. BASA MAL *v.* MAHARAJ SINGH

[I. L. R., 8 All., 205

76. ——— *Son's liability for father's debt—Sale of ancestral property—Bonâ fide purchaser.*—By the sale of ancestral property in execution of a mere money-decree against the father for his separate debt, only the right, title, and interest of the father pass to the purchaser and nothing more, and this holds good whether the purchaser is a stranger or the decree-holder himself. A purchaser at a Court sale cannot set up the title of a *bonâ fide* purchaser for value without notice. *Lakhmichand Walchand* v. *Kastur B-char, 9 Bom., 60,* and *Sobhagchand Golabchand* v. *Bhaichand, I. L. R., 6 Bom., 192,* followed. BHIKAJI RAMCHANDRA OKE *v.* YASHVANTARAV SHRIPAT KHOPKAR

[I. L. R., 8 Bom., 489

77. ——— *Mitakshara law —Alienation, voluntary and involuntary, by the members of a family governed by the Mitakshara law.*—*A*, a Hindu governed by the Mitakshara law, after the attachment of a property, part of his ancestral estate, to which he and his minor son *B* were jointly entitled as members of a joint Hindu family, conveyed by a deed of gift the whole of his interest in the ancestral property, including the property under attachment, to *B*. Five days after the execution of the deed of gift the property was sold in execution of the decree of the attaching creditor, *C*, and was purchased by *C* at such sale. Ten days after the sale, *A* instituted proceedings, under s. 256 of Act VIII of 1859, to set it aside on the ground of irregularity. These proceedings were afterwards continued in the name of *A*, but virtually on behalf of the minor *B*, under the control and direction of the Collector, who had taken charge of his estate, and appointed a manager under Act XL of 1858. These proceedings terminated in 1874 by the application to set aside the sale being dismissed, and the sale was therefore confirmed, and *C* took possession of the property. In 1877 a suit was instituted on behalf of *B*, by the manager appointed by the Collector, against *C* and *A* to recover possession of the property, on the ground (1) that when it was sold it was not the property of *A*, the judgment-debtor; and (2) that the property of a joint Hindu family could not be sold or alienated by, or taken in execution of, a decree against a single member of that family. *Held* (1) that the fact that the plaintiff, through his guardian, had actively intervened in the proceedings under s. 256 of Act VIII of 1859, was no bar to the institution of the present suit on his behalf; (2) that *C* at the sale purchased the interest, whatever it was, of *A* only, and was entitled to have it ascertained and allotted to him on partition; and (3) that although under the Mitakshara law a member of joint family cannot, or may not, be able to alienate his share or interest in the joint family estate, yet such share or interest can be taken in execution and sold by the holder of a decree against him. COLLECTOR OF MONGHYR *v.* HURDAI NARAIN SHAHAI . I. L. R., 5 Calc., 425 : 5 C. L. R., 112

78. ——— *Civil Procedure Code (Act VIII of 1859), s. 264—Execution of decree against a member of an undivided family by sale of his personal interest in the family estate, which was an impartible zamindari; such interest, by reason of his death before the sale, consisting only of the rents and profits then uncollected.*—On a sale of the right, title, and interest in an impartible zamindari, in execution of decrees against the zamindar, the head of an undivided family, the question was whether (*a*) only his own personal interest, (*b*) the whole title to the zamindari, including the interest of a son and successor, passed to the purchaser. The proclamation of sale purported to relate to (*a*) only; and between the dates of proclamation and the auction-sale the zamindar died. On the argument that, this having given rise to an ambiguity, the Court must be understood to have sold all that it could sell, and that, under the circumstances, it could sell, and was bound to sell (*b*); because the debts, the subject of the decrees under execution, not having been incurred by the late zamindar for any immoral purpose, the entire zamindari formed assets for their payment in the hands of his son,—*Held*

SALE IN EXECUTION OF DECREE —*continued*

9 JOINT PROPERTY—*continued*

that the question of what the Court could or should have sold had not arisen All that required decision was what the Court had sold If (*a*) only was put up for sale, then that interest only could have been purchased. Two Courts having concurred in finding that (*a*) only was sold, in which also their Lordships agreed, only that interest passed to the purchaser PETTACHI CHETTIAR *v* SANGILI VIRA PANDIA CHINNATAMBIAR . I L R, 10 Mad, 241 [L R, 14 I A, 84

79. ——— *Purchaser at a sale in execution of a decree directing sale of the whole right, title, and interest of grandfather—Assignment by grandsons of the same property subsequently to such sale, Effect of*—In 1858 *S* mortgaged certain ancestral property to the first defendant for a term of nine years In 1864, *S* being then dead, the defendant sued *R*, the son of *S*, to recover the money debt, and obtained a decree against the estate of the deceased The land in question was thereupon attached and sold on the 13th August 1873, subject to defendant's mortgage-lien, and was purchased for the defendant by his cousin The certificate of sale was drawn up in accordance with the decree, and recited that the purchaser bought the whole right, title, and interest of *S* On the 3rd August 1882 the plaintiff purchased from *R*'s sons the share of *R* in *S*'s estate The plaintiff sued the defendant to redeem the property The Court of first instance rejected his claim On appeal, the lower Appellate Court reversed that decree, and remanded the case for re trial Against this order of remand, the defendant appealed to the High Court *Held*, restoring the decree of the Court of first instance, that the language of the decree showed that the intention was to make the land itself liable for the debt, and not merely *S*'s interest By his purchase the defendant was to be regarded as having bargained for, and purchased the entire interest in, the land *Nanomi Babuasin v Modhun Mohun, I. L R, 13 Calc, 21,* followed SAKHARAM SHET *v* SITARAM SHET [I L R, 11 Bom, 42

80. ——— *Joint Hindu family—Fraudulent hypothecation by father—Suit upon the personal obligation against the father only—Money decree, Sale in execution of—Sale* [illegible]

[illegible] a joint Hindu can produce as [illegible]

[illegible] passed by the [illegible] The father and manager of a joint Hindu family executed a deed whereby he hypothecated certain zamindari property, covenanting to put the mortgagee in proprietary possession thereof if the debt should not be paid on [illegible]

[illegible] right, title, and interest of the judgment debtor in certain joint family property was notified for sale, and a sale took place at which, upon the face of [illegible]

[illegible] assumed to have been passed against him in his capacity as karta, and that the other members of the family were therefore bound by the decree and sale The other members brought a suit to recover possession of their shares *Held* that, inasmuch as upon the terms of the sale certificate nothing more passed to the defendants at the sale than the right, title, and interest of the father, the plaintiffs were entitled to maintain the suit and to have a decree declaring them entitled to the whole property, subject to a declaration that the defendants as auction-purchasers of the father's share, might come in and claim a partition of that share out of the joint estate *Per* MAHMOOD, *J*, that the plaintiffs were entitled to succeed on the further ground that the debt for which the decree against the father was passed was immoral within the meaning of Hindu law *Simbhunath Panday v Golap Singh, L R, 14 I A, 77 I. L R, 14 Calc, 572 Deendyal v Jugdeep Narain Singh, L R, 4 I A, 247 I L R, 3 Calc, 198*, and *Hurdey Narain Sahu v Ruder Perkash Misser, L R, 11 I A, 26 I L. R, 10 Calc, 626,* referred to RAM SAHAI *v* KEWAL SINGH . I L R., 9 All, 672

81 ——— *Decree against father—Sale of ancestral estate in execution of money decree—Son's rights and liabilities*—*A* purchased the half share of the judgment-debtors in certain immoveable family property, at a Court sale held in execution of money decrees against *B* and his brother, who were members of an undivided Hindu family *B*'s undivided son sued *A*—*B* and the remaining members of his family being also joined as defendants—to recover a share in the land, alleging that his interest was not bound by the sale, but he did not prove that the debt for which the decrees were passed was immoral, and it appeared [illegible]

[illegible] and followed KUNHALI BEARI *v* KESHAVA SHANBAGA . . . . I. L. R., 11 Mad, 64

82 ——— *Joint family—Mortgage by father and eldest son—Death of*

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

father and eldest son—Decree obtained by mortgagee against minor son represented by the widow —Sale in execution—Subsequent suit by minor to set aside sale.—In 1862 *R* and his son *A* mortgaged the property in dispute to *B*. In 1863 *R* died, leaving a widow *S* and two sons, *viz.*, *A*, and *P*, a minor. In 1866, *A* and *S*, the latter of whom acted for herself and as guardian of her minor son *P*, settled the account with *B*, the mortgagee, obtained a fresh advance, and passed a fresh mortgage-bond to him. In 1868 *A* died. In 1869 *B's* assignee filed a suit upon the mortgage, and obtained a decree against the mortgaged property against *S* both as guardian of the minor *P* and also against her in her individual capacity. At the Court-sale held in execution of this decree, *D* purchased the property in dispute in 1870. In 1881 *P* filed the present suit to recover possession of the property, alleging that *B's* purchase was invalid as against him, he having been a minor at the time of the Court-sale. *Held*, upon the merits, that the debt for which the decree was passed, being a family and ancestral debt, was binding upon the whole family, including the plaintiff, who was therefore not entitled to disturb the execution-purchaser. DAJI HIMAT *v.* DHIRAJRAM SADARAM

[I. L. R., 12 Bom., 18

83. ——— *Joint family—Money-decree—Decree against father alone—Purchaser at execution-sale under such decree —How far such sale binding on the interest of the sons not parties to the suit or execution-proceedings.*—In the case of a joint Hindu family whose family property is sold by the father alone by private conveyance, or where it is sold in execution of a decree obtained against him alone, the mode of determining whether the entire property, or only his interest in it, passes by the sale, is to inquire what the parties contracted about in the case of a conveyance, or what the purchaser had reason to think he was buying, if there was no conveyance, but only a sale in execution of a money-decree. In the case of an execution-sale, the mere fact that the decree was a mere money-decree against the father as distinguished from one passed in a suit for the realization of a mortgage security directing the property to be sold, is not a complete test. The plaintiff claimed certain property from the defendant, alleging that he had purchased it from a third person who had purchased it at an auction-sale held in execution of a money-decree obtained against the first defendant alone. The first defendant was the father of the remaining defendants, and they constituted a joint Hindu family. The sons contended that only the father's interest was bound by the sale; and the lower Courts decided in their favour. On appeal, the High Court reversed the decree, and sent back the case for a fresh decision, on the ground that the lower Courts had decided the question in the case exclusively on the ground that the property had been purchased in execution of a money-decree without referring to the execution-proceedings. KAGAL GANPAYA *v* MANJAPPA

[I. L. R., 12 Bom., 691

SALE IN EXECUTION OF DECREE —*continued.*

9. JOINT PROPERTY—*continued.*

84. ——— *Sale for debt of father—Suit by son to set aside sale—Failure to prove immoral purpose of debt.*—A sale in execution of a decree against a zamindar for his debt purported to comprise the whole estate of his zamindari. In a suit brought by his son against the purchaser, making the father also a party defendant, to obtain a declaration that the sale did not operate as against the son as heir not affecting his interest in the estate, the evidence did not establish that the father's debt had been incurred by him for any immoral or illegal purpose *Held* that the impeachment of the debt failing the suit failed; and that no partial interest, but the whole estate, had passed by the sale, the debt having been one which the son was bound to pay. *Hardi Narain Sahu v. Ruder Perkash Misser, I. L. R., 10 Calc., 626: L. R., 11 I. A., 26* (where the sale was only of whatever right, title, and interest the father had in property), distinguished. MINAKSHI NAYUDU *v* IMMUDI KANAKA RAMAYA GOUNDAN . I. L. R., 12 Mad., 142

[L. R., 16 I. A., 1

85. ——— *Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Transfer of Property Act, s. 99—Sale of mortgage property in execution of decree on a money-bond for interest due on the mortgage.* —The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money-bond for the interest then due on the mortgage. In 1882 the mortgagee brought a suit on the money-bond; and having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person. *Held* that the sale did not convey the interest of another undivided brother who was not a party to the decree. *Held* further *per* KERNAN, *J.*, that the sale in execution was invalid under the Transfer of Property Act, s. 99. SATHUVAYYAN *v.* MUTHUSAMI . I. L. R., 12 Mad., 325

86. ——— *Judgment-debtor's share in joint ancestral estate—Mitakshara law—Execution of decree by sale of such share—Rights of co-sharers not being parties to the decree or execution-proceedings—Sale certificate.*—The question was whether the whole estate belonging to a joint family, living under the Mitakshara, including the shares of sons, or the share of their father alone, passed to the purchaser at a sale in execution of a decree against the father alone upon a mortgage by him of his right. *Held* that, as the mortgage and decree as well as a sale certificate expressed only the father's right, the *primâ facie* conclusion was that the purchaser took only the father's share, a conclusion which other circumstances—the omission on the part of the creditor to make the sons parties and the price paid—not only did not counteract, but supported. The enquiry in recent cases regarding the liability of

SALE IN EXECUTION OF DECREE —*continued*

9 JOINT PROPERTY—*continued*

the estate of co sharers in respect of transfers made by, or execution against, the head of the family has been this, viz, what if there was a conveyance, the parties contracted about, or what if there was only a sale in execution, the purchaser had reason to think he was buying Each case must depend on its own circumstances *Upooroop Tewary v Lalla Bandhjee Suhay, I L R, 6 Calc, 743*, distinguished SIMBHUNATH PANDE v GOLAP SINGH

[I. L R, 14 Calc, 572
L. R., 14 I. A, 77

87. ——— *Hindu law—Joint family—Court sale of right, title, and interest of the father, Effect of*—One *R* and his sons were members of an undivided family In execution of

ed this They is and inalienable, and that the execution sales affected nothing except *R*'s life interest, and that on *R*'s death they (the plaintiffs) became entitled They also contended that even if the Court should find the lands were not service vatan lands they were at all events, ancestral property, and that the plaintiffs' interests therein were not affected by execution sales

"right, title and interest" of the judgment debtor are ambiguous words which may either mean the share which he would have obtained on partition or the amount which he might have sold to satisfy his debt, and it is in each case a

[I. L R, 15 Bom., 13

88. ——— *Son's interest in ancestral property—Death of son before sale*—Where the son died between attachment and sale, the judgment creditor was held to have no property in what he had attached, so as to entitle him to sell it in execution of his decree GOOR PERSHAD v SHEODEEN 4 N. W, 137

89. ——— *Right of purchaser—Sale of reversionary interest*—*A*, a Hindu, was possessed of an undivided moiety in certain pro-

as to his present possessory right,

SALE IN EXECUTION OF DECREE —*continued*

9 JOINT PROPERTY—*concluded*

MACPHERSON, *J*, gave a decree for the present possessory right, but refused to make any decree as to the contingent reversionary interest of *A* KISTO DHONE GANGOOLY v. RABUTTY DOSSEE

[1 Ind Jur., N S, 324

90 ——— *Interest of co-widows in estate undivided*—The co-widows of one and the same husband take a joint interest in one undivided estate *Semble*—The interest of one or two such widows cannot be sold in execution of decree KATHAPERUMAL v VENKABAI

[I. L R, 2 Mad, 194

91. ——— *Right of purchaser under joint decree*—

Where a joint d

passed against

was executed against the latter as the sole surviving judgment debtor, by the sale of his rights and interests in the property, the joint property was held to have been passed even though the sale certificate omitted the word "property" CHOWDHRY ZUHOORUL HUQ v GOOROO CHURN ROY

[15 W. R, 329

10 MORTGAGED PROPERTY

92. ——— **Mortgagor, Interest of**—*Sale under money-decree—Sale under decree enforcing mortgage*—There are substantial differences between a sale in execution for a money decree and a sale

in the latter case, whatever interest the mortgagor

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I. L. R., 4 Mad, 1

93 ——— **Interest taken by purchaser.**—Where the rights and interests of a judgment debtor are sold in execution, the purchaser takes the land to which they relate, subject to such mortgages and leases as may be existing OOJAGUR ROY v RAM KHELAWAN SINGH . 10 W. R., 384

94. ——— *Proclamation of sale—Mortgages*

I. L. R., 15 Bom, 175

95. ——— *Purchaser of mortgaged property, Rights of—Right to set aside incumbrances*—A purchaser of property sold under a decree in favour of a mortgagee cannot claim to set aside, as prejudicial to its rights, a tiers

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

pottah granted by the mortgagee when those rights were not in existence. It cannot be maintained that the purchaser of property sold under a decree in favour of a mortgagee takes the property free from such lease or farm as the owner might have found to be expedient or convenient, provided the value of the property was not impaired and the operation of the mortgagee's lien not impeded. BANI PERSHAD *v.* REET BHUNJUN SINGH . . 10 W. R., 325

96. ———— *Conditional sale executed before sale of execution, but after mortgagee's decree.*—A purchaser under a decree for sale obtained by the mortgagee under a simple mortgage does not purchase subject to a conditional sale executed by the mortgagor after the prior mortgagee had obtained a decree of sale, but before the property was actually sold. RAJNARAIN SINGH *v* SHEERA MEAN . . . . . 7 W. R., 67

97. ———— *Nature of mortgagee's security—Sale by mortgagee—Rights of subsequent mortgagee—Civil Procedure Code, 1859, s. 259.*—The security to which a mortgagee becomes entitled under the ordinary form of mortgage in the mofussil is the right to sell the entire estate of the mortgagor as the same existed at the date of the mortgage, and he cannot be deprived of this security by any subsequent charges on the property or prior unregistered charges which the mortgagor may create or have created. When he brings the property to sale, the sale is an out-and-out sale of the estate of the debtor, and the purchaser takes the property subject only to those incumbrances which were in existence at that date, though such of the subsequent incumbrancers as may, at the time of the sale, have taken out execution, may have a right to satisfy their claims from the surplus proceeds of the sale. In applying s. 259 of the Code of Civil Procedure to cases of the above description, the words, "the right, title, and interest of the defendant in the property sold," must be understood as meaning the right, title, and interest which the decree ordered to be sold,—*i.e.*, the right, title, and interest which the judgment-debtor had in the property at the time of the mortgage. KASANDAS LALDAS *v.* PRANJIVAN ASHARAM [7 Bom., A. C., 146

BROJO KISHOREE DOSSIA *v.* MAHOMED SULEEM [10 W. R., 151

S. C. BRAJARAJ KISORI DASI *v.* MOHAMMED SALEM . . . . 1 B. L. R., A. C., 152

98. ———— *Right to redeem.*—Where a decree-holder sells a mortgagor's rights and interest in property already mortgaged and declared liable to sale in liquidation of the debt for which it was mortgaged, the purchaser purchases merely the mortgagor's right to redeem. LALLA JOOGUL KISHORE LALL *v.* BHUKHA CHOWDHRY [9 W. R., 244

99. ———— *Right of purchaser—Rights of respective mortgagees.*—A mortgage made by way of security for money advanced remains a mortgage until the debt is satisfied, and the mortgagee-creditor has every right to sue to obtain a decree and sell that which is held by him as security for his money, without any regard to the proceeding of any other subsequent mortgagee or purchaser. A purchaser at a sale in execution of such a decree under a prior mortgage, as well as the original holder of a prior mortgage, has rights far superior to those of any other mortgagee or purchaser of a subsequent date. A subsequent purchaser, by payment of an earlier mortgage, and obtaining a decree for the money so paid, does not acquire any rights belonging to that mortgage. His payment was a voluntary act, and his decree against his vendor was a personal one for a simple debt, not secured by any security connected with any portion of the land in dispute. DHOREE ROY *v.* BULDEB NARAIN SINGH W. R., 1864, 345

100. ———— Purchase by mortgagees—*Lien of mortgagee—Liability of purchaser—Incumbrances.*—Certain mouzahs were granted in zur-i-peshgi lease by *G* to plaintiff's ancestor. After *G*'s death, his heir, *F*, pledged one of the mouzahs, *B*, with others as collateral security, in a bond in favour of plaintiff, and some years later executed a zur-i-peshgi pottah in favour of defendant, who obtained possession by paying to plaintiff the money due under the first zur-i-peshgi lease. Plaintiff then sued *F* alone on his bond and obtained a decree, in execution of which he sold a share in *B* and purchased it himself. In a suit for possession and to have the superiority of his lien declared over defendant's zur-i-peshgi,—*Held* that plaintiff was not entitled to possession until he paid off the whole of the amount advanced by the defendant to clear off the debt due under the first zur-i-peshgi lease. *Held* also that the holder of a subsequent incumbrance, by paying off a prior incumbrance, acquires all the rights of the latter so far as the amount actually paid by him for that purpose is concerned. BEKON SINGH *v.* DEEN DYAL LALL . . . . 24 W. R., 47

101. ———— Right of purchaser of mortgaged property *First and second mortgages.*—Where a mortgagee sues upon his mortgage-bond and his claim is decreed, the decree should be satisfied out of the mortgaged property, and not out of the right, title, and interest which remain in the mortgagor. The purchaser at the execution-sale acquires all the interest which passed by the mortgage to the mortgagee, and any interest which remained in the mortgagor—*i.e.*, his equity of redemption. If there was a second mortgage, all that it could pass from the mortgagor was his equity of redemption, and the decree in a suit on such mortgage could only authorize the sale of the equity of redemption, unless the first mortgagee was made a party, and his mortgage shown to be invalid and the second mortgage to have priority. DOOLAL CHUNDER DEB *v.* GOLUCK MONEE DEBIA . . . . . . 22 W. R., 360

102. ———— *Effect of sale—Parties.*—The usual mode, in the mofussil Civil Courts, of selling in mortgage suits "the right, title, and interest" of the mortgagor or his heir, is not

SALE IN EXECUTION OF DECREE
—continued

10 MORTGAGED PROPERTY—*continued*

is the right title, and interest of the mortgag r as it stood when he made the mortgage and not merely as it stood at the time of the Court sale One *U* mortgaged certain immoveable property to *A R* (defendant No 1) for R400 on the 7th May 1865 On the death of *U*, the mortgagee *A R* brought a suit (No 311 of 1871) against his widow *K* (defendant No 2) but did not make his (*U's*) children (who were minors) parties to it On the 28th July 1871 *A R* obtained a decree for R160 being the amount of principal and interest due on his mortgage with further inter st from the date of suit to date of payment That d cree directed ... of ... f th ...

effect that he had purchased at the Court sale th right t tle and interest of *H* (the widow) in the mortgaged property On the 17th August 1874 the auction purchaser sold the property for R700 to the father of the plaintiff In 18 7 the plaintiff sued *A R* (the mortgagee and decree holder) to recover possession of the property with mesne profits *U's* widow *K* and children (two sons and a daughter) were

dispute and collected the produce thereof Defendant No 1 (*A R*) denied his liability The

defendants Nos 3 4 and 5 as they had not been

mortgage-decree in suit No 311 of 1871 and the

(defendant No 2) in the mortgaged property and did not affect the r ghts of defendants Nos 3 4 and 5 who were not parties to it On appeal to the High Court —*Held* that the ...

SALE IN EXECUTION OF DECREE
—continued

10 MORTGAGED PROPERTY—*continued*

would have obtained if they had been made parties to that suit *viz*, the right of redeeming the property by paying off the mortgage The High Court accordingly reversed the decree of the District Judge and directed the defendants Nos 3 4 and 5 to pay to the plaintiffs within six calendar months from date the sum of R160 with interest on the principal (R400) from date of the institution of suit No 311 of 1871 until payment The Court further directed that in default of payment the mortgage should be foreclosed and defendants Nos 3 4 and 5 precluded from redeeming the property which should be delivered up to the plaintiff ABDULLA SAIBA *v* ABDULLA I L R., 5 Bom, 8

See also SHRINGAPURE *v* PETHE
[I L R, 2 Bom, 662

103 ———— *Decrees enforcing mortgages — Priority* — Certain immoveable propert
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property at the sale in the execution of the decree which enforced the earlier charge was entitled to the possession of such property in preference to the purchaser of it at the sale in the execution of the decree

Moracha Kooer 25 *W R* 201 distinguished JANKI DAS *v* BADRI NATH I L R, 2 All, 698

104 ———— *Right of prior mortgagee* —On the 31st August 1863 *A* mortgaged his house to *B* who brought a foreclosure suit and on the 7th Jul ... r the sale of the ... paid on or befor ... not having been pa ... Court s

that the plaintiff s sale was subject not only to the mortgage of 1863 but also to the decree upon it under which the right title and interest of the mortgag r *A* passed in 1870 to *C* whose purchase was entitled to preference to the plaintiff s purchase in 1868 RAVJI NARAYAN *v* KRISHNAJI LAKSHMAN
[11 Bom, 139

105 ———— *Sale under mortgage for payment of Government revenue — Rights of respective purchasers* —In 1855 a decree for an account was passed in the Supreme Court of Calcutta against *A* an executor *A* died in 1856 and the suit which was revived against his representatives came on for consideration on further directions on 29th August 1866 It was then found that *A's* estate was liable for R1 32 406 11 8 and his representatives were ordered to pay this money into Court The representatives having made default in payment,

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

a writ of *fieri facias* was issued, under which the property was sold by the Sheriff of Calcutta, and conveyed by him to *B* on 1st April 1867. Previously to this, the representatives of *A* had, on 11th January 1865, mortgaged the same property, together with other lands, "for the purpose of paying the Government revenue of certain talukhs belonging to *A*, deceased;" and the mortgagee having obtained a decree on his mortgage, the property was sold to *C* under that decree on 30th March 1867. In a suit for possession by *C* against *B*,—*Held* that, though the sale to *B* was made for the express purpose of paying the debts of *A*, *B*'s title was not to be preferred to that of *C*, who claimed under the mortgage of 1865, which was made for the purpose of paying Government revenue; and, *semble*, the result would be the same even if the mortgage of 1865 had not been made for the purpose of paying Government revenue, as it did not appear that the mortgagee, at the date of the mortgage, knew that there were unpaid creditors of *A*, and that *A*'s representatives intended to misapply the money so advanced to them. *Greender Chunder Ghose v. Mackintosh, I. L. R., 4 Calc., 897*, followed. KASSIMUNNISSA BIBEE *v.* NILRATNA BOSE [I. L. R., 8 Calc., 79 9 C. L. R., 173 : 10 C. L. R., 113

106. ———————— *Money-decree—Decree enforcing hypothecation—Act X of 1877 (Civil Procedure Code), ss. 287, 316—Act VIII of 1859 (Civil Procedure Code), ss. 219, 259.*—Certain immoveable property was put up for sale, under the provisions of Act X of 1877, in execution of a decree for money, and was purchased by *C*, with notice that *L* held a decree enforcing a lien on such property. Subsequently *L* applied for the sale of such property in execution of his decree, and such property was put up for sale in execution of that decree, and was purchased by *S*. *S* sued, by virtue of such purchase, to recover possession of such property from *C*. *Held* that, inasmuch as under Act X of 1877 what is sold in execution of a decree purports to be the specific property, and as *C* had purchased the property in suit with notice of the existing lien on it and subject to its re-sale in execution of the decree in execution of which *S* had purchased it, what actually was sold in execution of that decree to *S* was such property, and *S* was entitled to possession of such property under such sale. Sales under Act VIII of 1859 and Act X of 1877 distinguished. SHEO RATAN LAL *v.* CHOTEY LAL . . I. L. R., 3 All., 647

107. ———————— *Unauthorized sale of mortgaged property—Payment by vendor of mortgage-debt—Lien of vendee.*—The plaintiff as purchaser at a Court's sale sued to recover land in possession of the defendant. The defendant alleged that he had bought the land from the widow of the previous owner by whom it had been mortgaged, and that he (the defendant) had paid off the mortgage. The previous owner had left a minor son. The lower Courts passed a decree for the plaintiff, on the ground that the sale by the widow to the defendant was invalid, as she had not obtained a certificate of administration to her husband under Act XX of 1864. *Held* that the defendant had a lien upon the land for the amount of the mortgage-debt which he had paid, and that the plaintiff could not set aside the sale to the defendant without refunding the amount secured by the lien. KUVARJI *v.* MOTI HARIDAS [I. L. R., 3 Bom., 234

108. *Sham mortgage.*—In 1861 *J* mortgaged certain lands to the defendant, who in 1864 sued upon the mortgage, and obtained a decree for sale. The decree remained unexecuted by the defendant. In 1869 the lands were sold in execution of a money-decree against *J*, and the plaintiff became the purchaser. Thereupon the defendant attached the land in execution of the decree obtained by him in 1864. The Court found that the mortgage of 1861 was not a *bonâ fide* mortgage. In a suit for possession,—*Held* that the plaintiff was entitled to succeed. The decree obtained in 1864, being based upon a colourable mortgage, gave the defendant no claim as against a subsequent *bonâ fide* purchaser for value. What was purchased by the plaintiff at the execution sale in 1869 was the real interest of *J* in the lands in question, not his interest as diminished by a fictitious derogation arising out of a sham transaction. GOPI WASUDEV *v.* MARKANDE NARAYAN BHAT . . I. L. R., 3 Bom., 30

109. ———————— *Suit for rent after execution of mortgage-decree.*—*P* got a decree on a mortgage bond in the terms of a compromise by *C* and others to the effect that the amount due should be paid by instalments, the property mortgaged remaining hypothecated. Meantime one *M* got a decree against *C*, and in execution sold part of the property,—*viz.*, a house,—subject to the lien of *P*, bought it in herself, and sold it again by private sale to plaintiff, who realized rent for some months. When *M* was put in possession, *P* petitioned the Court, objecting, but being referred to a regular suit he executed his original decree, bringing the hypothecated property to sale, and bought it himself, without, however, getting possession from the Court till many months later. Plaintiff then sued the tenant of the house in the Small Cause Court for rent, and *P* intervened as a party to the suit, claiming the rent which had fallen due from the date of his getting possession. *Held* that the plaintiff was not in a position to maintain the suit, his possession having been put an end to by *P*, whose lien on the property was anterior to the sale under which plaintiff purchased. POORNO CHUNDER BOSE *v.* NOBIN CHUNDER GHOSE [14 W. R., 77

110. ———————— *Sale of decree-holders' rights and interests—Notice of assignment.*—Where the rights and interests of decree-holders in a decree are sold in execution, the party purchasing *bonâ fide* without any knowledge of a previous assignment of those rights and interests is entitled to the proceeds of the purchased decree free from any trusts or obligation in favour of the assignees. NUNHUK SAHOO *v.* JUGGESSUR OOPADHYA [20 W. R., 408

SALE IN EXECUTION OF DECREE —*continued*

10 MORTGAGED PROPERTY—*continued*

111. ——— *Notice* —*G* borrowed money from *S* He then borrowed money from *D*, mortgaging as security the property in suit After that he borrowed from plaintiffs executing a bond by which he again mortgaged the same property

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proprietors Plaintiffs now sued for declaration and

they could only retain possession by paying off both mortgages *Held* also that plaintiffs purchased not merely the equity of redemption but *G's* rights and interests as they were when the mortgage was created subject to the mortgage held by *D* but free from subsequent incumbrances NARAIN SAHOO *v* OCHOOT SAHOO **14 W R, 233**

See WAJED HOSSEIN *v* HAFEZ AHMED REZAH [17 W. R., 480

112 ——— *Money decree—Mortgage decree—Notice—Civil Procedure Code (Act XIV of 1882), s 287* —A creditor obtained two decrees against his debtor one being a mortgage-decree to enforce his lien on certain property, and the other a simple money decree In execution of the second decree, the property over which the judgment-creditor had a lien was sold and was purchased by a third person Subsequently, in execution of the first decree at the instance of the judgment creditor, this same property was advertised for sale but on the

BUR SINGH **I. L R, 10 Calc, 609**

113 ——— *Priority* —The

SALE IN EXECUTION OF DECREE —*continued*

10 MORTGAGED PROPERTY—*continued*

after the Registration Act of 1864 came into force, but were, however, unregistered *Held* that if the plaintiff had come in and offered to satisfy so much of

defendant RAJAH RAM *v* BAINEE MADHO [5 N W, 81

114 ——— *Effect of sale—Estoppel* —On 10th September 1863 *A* mortgaged a house to *B* who registered the deed but did not obtain possession of the premises On 2nd July 1868 *A* mortgaged the same house to *C* who registered the mortgage deed and took possession of the premises On 10th October 1868 *B* sued on his mortgage and obtained a decree against *A's* son who was a minor, and who was represented by his mother as his guardian She, however, had obtained no certificate of administration under the Minors Act XX of 1864 On 17th December 1869 the mortgaged property was sold by the Court in execution of *B* s decree The plaintiff bought it, and obtained a certificate of sale On the plaintiff s attempting to take possession of the property the defendant who was *C's* widow and heiress resisted him and he thereupon sued to recover it *Held* that the plaintiff was entitled to possession He stood, at least in the same position as had been occupied by *B* before the sale and *B*, as prior mortgagee had a superior title to that of defendant, who claimed under a subsequent deed Where mortgaged property is sold in execution of a decree in a suit brought upon the mortgage the interest of the mortgagee at whose instance the sale is made, is held to pass to the purchaser, and the mortgagee is estopped from disputing that such is the effect of the sale KHEVRAJ JUSRUP *v* LINGAYA

[I L R 5 Bom, 2

115 ——— *Sau mortgage—Registration of certificate of sale—Civil Procedure Code, 1877, s 287—Notice—Warranty of title* —A buyer of property at an execution sale who registers his certificate of sale does not thereby acquire a

concealment of a sau mortgage he sold property as

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

free of that charge, he would commit a fraud. The Court cannot be deemed to do that which would be a fraud if done by the judgment-debtor. If, then, the Court sell only the right, title, and interest of the judgment-debtor subject to all existing equities against the property sold, the registration of the Court's conveyance (*viz.*, certificate of sale) cannot enlarge the scope of that conveyance and discharge the property from any unregistered incumbrance which was binding on the judgment-debtor. *Per* MELVILL, *J.*—In the case of execution-sales under s. 287 of the Civil Procedure Code (Act X of 1877), notice is given to purchasers that the sale only extends to the right, title, and interest of the judgment-debtor, and that the Court ordering the sale does not warrant the title. This being so, it seems clear that a person who buys an avowedly doubtful title, and pays for it on that understanding, cannot claim to be a purchaser without notice. SOBHAGCHAND GULABCHAND *v.* BHAICHAND . . I. L. R., 6 Bom., 193

See LAKSHMANDAS SARUPCHAND *v.* DASRAT [I. L. R., 6 Bom., 168

and RUPCHAND DAGDUSA *v.* DAVLATRAV VITHALRAV . . . . I. L. R., 6 Bom., 495

116. ———————— *Mortgage-debt payable by instalments—Money-decree obtained by mortgagee for two instalments—Sale of mortgaged property in execution of money-decree for such instalments without notice by mortgagee of lien for future instalments—Property sold free of incumbrances—Civil Procedure Code (Act XIV of 1882), ss. 237, 287.*—The effect of ss. 237 and 287 of the Civil Procedure Code plainly is to impose a duty on the person applying for execution to disclose to the Court his own lien (which he must know of) in his application for sale, and on the Court the duty of specifying the same in the proclamation. Where therefore in execution of a simple money-decree obtained for some of the instalments due on his mortgage-bond a mortgagee brought to sale the property which he held in mortgage, but in his application for execution did not mention his lien on the property for the instalments that were still to fall due,—*Held* that the purchaser, if he supposed that he was purchasing the full proprietary title, purchased the property free of the mortgagee's lien. *Agarchand* v. *Rakhma, I. L. R., 12 Bom., 678; Kheiraj* v. *Lingaya, I. L. R., 5 Bom., 2; Sheshgiri* v. *Salvador Vas, I. L. R., 5 Bom., 5;* and *Dhondo* v. *Rarji, I. L. R., 20 Bom., 290,* referred to. RAMCHANDRA VITHURAM *v.* JAIRAM . . . I. L. R., 22 Bom., 686

117. ———————— *Mortgagee not in possession—Registered lease—Effect of sale in transferring property to purchaser.*—*A* mortgaged his land to *B* in 1861, which mortgage was then registered, but the mortgagee did not enter into possession. Subsequently, in 1866, *A* leased the same land to *C*. That lease was registered, and *C* entered into possession. In 1867 *B* obtained a decree upon his mortgage, and in execution attached and sold the mortgaged property. *C*, who had applied to have this attachment of the land removed and failed in his application, sued to establish his right under the lease and recover possession. *Held* that, under the lease of 1866, he could only take what the mortgagor had to give him, *viz.*, a lease subject to the registered mortgage. Where a decree is obtained upon his mortgage by a mortgagee, and the mortgaged property is sold under the decree for the purpose of paying off the mortgagee, the interest of both mortgagor and mortgagee passes to the purchaser. The mortgagee is estopped from disputing that such is the effect of the sale, so far as his interest is concerned, although the officer of the Court may only have described the sale as one of the right, title, and interest of the mortgagor. It is not the practice in the mofussil to require the mortgagee to convey to the purchaser: the transfer takes place by estoppel. SHESHGIRI SHANBHOG *v.* SALVADOR VAS . I. L. R., 5 Bom., 5

118. ———————— *Mortgage without possession—Right of mortgagee as against the purchaser—Difference between a mortgage valid as against a private purchaser for valuable consideration and one valid as against a purchaser at a Court-sale—Priority—Optional registration.*—On the 19th September 1871 the land in dispute was mortgaged by *L* (defendant No. 1) to the plaintiff for R25. The deed of mortgage was not registered. By it defendant No. 1 agreed to pay interest at the rate of one pice per rupee per mensem, and it was provided that the mortgagee was to remain in possession for a period of twenty-five years in lieu of principal and interest, and that the mortgagor was not to claim the property back, unless he paid the principal and interest that might accrue due in twenty-five years from the date of the bond. On the 8th July 1872 the land was sold in execution of a decree against the father of *L* and purchased by *B* (defendant No. 2), who obtained possession under the certificate of sale. In 1874 the plaintiff (the mortgagee) sued *L* and *B* for possession of the property. It was contended for *B* (defendant No. 2) that the mortgage did not bind him, because he was a purchaser for value without notice of the mortgage, and because it was not accompanied with possession. *Held* that, although the mortgage to the plaintiff might have been without possession, it would bind the mortgagor himself, and was therefore binding as against defendant No. 2, who purchased at a Court-sale under a decree obtained against the mortgagor. A purchaser at such a sale takes only that which the judgment-debtor could himself honestly dispose of. Possession or registration is necessary to validate a mortgage in the Deccan or elsewhere in the Presidency of Bombay (except Gujarat) against a private purchaser for valuable consideration, but not against a purchaser at a Court sale. BAPUJI BALAL *v.* SATYABHAMABAI [I. L. R., 6 Bom., 490

See SHIVRAM *v.* GENU . I. L. R., 6 Bom., 515

119. ———————— *Unregistered sanmortgage—Sale—Subsequent unregistered mortgage of same property—Decree on latter mortgage and*

SALE IN EXECUTION OF DECREE
—*continued*

10 MORTGAGED PROPERTY—*continued*

sale in execution—Sale certificate registered—Priority—Interest passing on sale of mortgaged property in execution of a money decree and of a decree in mortgage —One *H* and his sons *B* and *C* executed a san mortgage of certain ancestral property in plaintiff's favour in 1885 The mortgage was unregistered In 1886 the same property was mortgaged by *C* alone by a deed which was also unregistered In 1889 *C*'s mortgagee obtained a decree on his mortgage for sale of the mortgaged property, and in execution put up the property to auction in 1892, when defendant purchased it Defendant got his sale certificate registered In 1894 the plaintiff brought this

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unregistered mortgage *Held* that the plaintiff was entitled to a decree His claim was superior to the defendant's The defendant had purchased the interest which *C* had mortgaged in 1889 But that mortgage was unregistered and was therefore subject to the plaintiff's mortgage, which, although unregistered was earlier in date The defendant by registering his certificate of sale, could not enlarge the estate which the certificate conveyed to him By a sale of mortgaged property in execution of a decree obtained by a mortgagee against the mortgagor upon the mortgage the interest both of the mortgagor and mortgagee passes to the purchaser But by a sale of mortgaged property in execution of a money decree obtained by the mortgagee against the mortgagor, the interest of the defendant (mortgagor) alone passes to the purchaser MAGANLAL *v* SHAKRA GIRDHAR . I L R., 22 Bom., 945

120 ———————— *Mortgaged land subsequently sold by mortgagee in execution of a money-decree—Purchaser at such sale with notice of mortgage—Mortgagee estopped from subsequently enforcing his mortgage as against purchaser—Fraudulent concealment of lien—Registration not equivalent to notice in case of fraud—Civil Procedure Code (VIII of 1859), s 213* —Where a judgment creditor in execution of a money decree sells property as belonging to his judgment debtor, he is afterwards estopped from enforcing as against the purchaser a previous mortgage of the property which has been created in his own favour but of

registered In 1867 *R* and *G* mortgaged certain

obtained possession through the Court In the meantime *G R* brought another suit upon his mortgage against his mortgagors He obtained a decree, and in April 1872 ejected the plaintiff and obtained possession In 1883 the plaintiff filed the present suit against *R*, *G*, and *G R* to recover the lands *Held* that the plaintiff was entitled to recover *G R* (the mortgagee), when bringing the land to sale in execution of his decree, was bound by s 213 of the Civil Procedure Code (VIII of 1859) to disclose the limited interest of his judgment debtors in it By concealing his lien he had induced the plaintiff to pay full value for the property, and he could not therefore retain his lien By his omission he was estopped from disputing the plaintiff's title The rule that registration of a mortgage amounts to notice to all subsequent purchasers of the same property, does not apply to a case where there has been a fraudulent concealment by a judgment creditor of the extent of his judgment debtor's interest in the property brought by the judgment creditor to sale AGARCHAND GUMANCHAND *v* RAKHMA HANMANT I L R, 12 Bom, 678

121 *Sale of equity of redemption—Suit by mortgagee for sale of mortgaged property—Purchaser not a party to suit—Sale of mortgaged property in execution of decree obtained by mortgagee—What passed—Right of purchaser of equity of redemption—Redemption* —On the 21st December 1871 three of the defendants in this suit mortgaged four groves to *H* In 1872 the plaintiffs obtained a money decree against one *D*, and in August 1872, in execution of that decree sold the said groves and at the sale purchased them and also two mills which were not in dispute in this

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the mortgagors on their mortgage, and obtained a decree on it and under the decree brought the said groves to sale in 1877, and purchased them himself In May 1880 *H* sold the groves to two of the defendants The plaintiffs, who were not parties to the suit which resulted in the decree under which the groves were sold in 1877, instituted this suit for possession of the groves *Held* that, notwithstanding the sale of 1872 what was sold under the decree of 1877 was the right title, and interest of the mort

a sale under a decree for sale by a mortgagee the right title, and interest of the mortgagor which is

the sale, still any puisne incumbrancer or purchaser from the mortgagor prior to the date of mortgagee's decree, and who was not a party to the suit in which the mortgagee obtained his decree would have the right to redeem the property which the mortgagor would have had but for the decree This view is consistent with the principles of equity and recognized by the Transfer of Property Act *Muhammad Samiud din v Man Singh, I L R, 9 All, 125,* followed GAJADHAR *v* MULCHAND

I L R., 10 All, 520

SALE IN EXECUTION OF DECREE —*continued.*

10. MORTGAGED PROPERTY—*continued.*

122. ——— *Purchase of mortgaged property by mortgagee at judicial sale on leave obtained to bid.*—Where mortgagees executed their decree on the mortgage, and, having obtained leave to bid at the judicial sale, purchased the property, *Held* that they could not be held to have purchased as trustees for the mortgagors, the leave granted to bid having put an end to the disability of the mortgagees to purchase for themselves, putting them in the same position as any independent purchasers. MAHABIR PERSHAD SINGH *v.* MACNAGHTEN . . . **I. L. R., 16 Calc., 682**
[L. R., 16 I. A., 107

DAKSHINA MOHAN ROY *v.* BASUMATI DEBI
[4 C. W. N., 474

123. ——— *Equities of mortgagors.*—In a suit for possession by the certificated purchaser of one-third of certain mouzahs which had been sold in execution of a decree obtained by the mortgagee against the defendant as mortgagor, it appeared that the defendant had, in a previous execution-sale at the instance of a second mortgagee of the same property, bought the same subject to his own first mortgage. The High Court held that the plaintiff should be treated, not as a purchaser, but as a mortgagee in respect of his purchase-money. They then directed that only so much of the original mortgage-debt as should be apportioned against the share bought by the plaintiff should be realized in his favour. *Held* that this ruling and direction were founded on a misapprehension that the purchaser had a right to possession of the property which he had bought, and that the defendant had no equity to prevent it. LUTF ALI KHAN *v.* FUTTEH BAHADOOR
[L. R., 16 I. A., 129
I. L. R., 17 Calc., 23

124. ——— *Rights of purchasers under mortgage-decree—Purchases in execution by decree-holders — Title of purchaser holding a decree on a mortgage which had preceded his opponent's decree.*—The plaintiffs and defendants, either party holding a separate decree against the same estate, had by leave purchased in execution. Both parties claimed the proprietary right and possession, the defendants holding the latter. The first of the decrees in date was the plaintiffs' for money against the representatives of the deceased owner of the property, which before then had been mortgaged to the defendants by his widow. The plaintiffs obtained only the equity of redemption, their purchase having been of the right, title, and interest. The mortgagees, having got a decree upon their mortgage against the widow, purchased at the sale in execution, and defended the possession which they obtained. *Held* that the defendants, in whose favour the decree had been made upon a *bonâ fide* mortgage, without notice that the mortgagor had been only holding benami for her husband, had the better title; that the High Court had rightly disallowed an objection taken by the plaintiffs, that this defence, as distinguished from the defendants' answer that the widow was the real owner, had not been set up or decided in the Court of first instance. MAHOMED MOZUFFER HOSSEIN *v.* KISHORI MOHUN ROY
[I. L. R., 22 Calc., 909
L. R., 22 I. A., 129

125. ——— *Purchase of equity of redemption by decree-holder under s. 294 of the Code of Civil Procedure—Execution of decree in respect of balance—Nature of price paid by purchaser on the purchase of the equity of redemption.*—*A* mortgaged certain land to *B*, but remained in possession thereof. Subsequently *A* sold a portion of the said land to *C* in consideration of her paying off the mortgage-debt due to *B*. *C* entered into possession, but was unable to satisfy the debt. *C* died, and *A* sued *C*'s daughter and legal representative for damages sustained by him from the non-payment of the purchase-money by *C*. *A* obtained a decree, and, the money not being paid as therein decreed, applied for execution, and brought to sale the equity of redemption vested in *C* by virtue of the sale. By leave of the Court, *A* bid at the Court-sale and bought the right of redemption and recovered back possession of the land sold to *C*. Subsequently he again applied for execution of the decree in respect of the balance by attachment of certain moveable property, and contended that he was bound to give the defendant credit only for the price which he actually paid at the Court sale for the equity of redemption. The defendant contended that *A* was bound to give credit for the full value of the land under mortgage. *Held* that, having obtained leave of the Court to bid under s. 294 of the Code of Civil Procedure, *A*'s position was that of an independent purchaser, and that the price, which an independent purchaser must be taken to pay when he buys property under mortgage for a cash payment made to the mortgagor on account of his equity of redemption, is the cash payment for the equity of redemption *plus* the debt, *i.e.*, the amount undertaken to be paid to the mortgagee, and that for these amounts *A* was bound to give credit. KRISHNASAMI AYYAR *v.* JANAKIAMMAL . . . **I. L. R., 18 Mad., 153**

126. ——— *Application for re-sale in execution of decree—Judgment-debtor purchasing benami—Rights of mortgagee.*—Upon an application made on the 28th August 1891 for execution of a mortgage-decree, the mortgaged property was sold and the judgment-debtors purchasoh it benami at a low price. Thereupon the decree-holders made an application on the 12th November 1891, asking the Court to set aside thebe nam purchase and re-sell the property. The first Court found that the purchase was not benami, and confirmed the sale on the 12th April 1892, but tde lower Appellate Court came to a contrary conclusion and set aside the sale on the 22nd July 1892. The High Court in second appeal accepted the finding of the Appellate Court as regards the purchase being benami, but upheld the sale with the remark that the said property and any other property of the

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—*continued*

10 MORTGAGED PROPERTY—*continued*

debtors might be sold in satisfaction of the mortgage-debt This judgment was passed on the 4th August 1893 On an application for execution made on the 3rd December 1894, objections were raised on the ground that the property was not liable to be sold again in execution of this decree *Held* that the previous sale under the mortgage decree was no bar to a fresh sale under the same decree *Ram Autar Singh* v *Tulsi Ram*, *5 C. L. R*, *227*, *Otter* v *Lord Vaux*, *2 K. & J*, *650*, *and 6 DeG M & G*, *638*, and *Lutf Ali Khan* v. *Futteh Bahadur*, *I L R*, *17 Calc*, *32*, referred to RAGHUNATH SAHAY SINGH v LALJI SINGH [I L R., 23 Calc., 397

127. ———— *Transfer of Property Act (IV of 1882)*, *s 88—Suit for sale on a mortgage—Purchase at auction sale by decree-holder—Further execution sought against other property comprised in the mortgage—Amount for which decree-holder must give credit to mortgagee*

... the mortgaged property purchased, by him, but only to the amount of the actual purchase money *Mahabir Parshad Singh* v. *Macnaghten*, *I L R*, *16 Calc*, *682*, *Sheonath Doss* v *Janki Proshad Singh*, *I L. R*, *16 Calc*, *132*, and *Ganga Pershad* v *Jowahir Singh*, *I L R*, *19 Calc*, *4*, referred to MUHAMMAD HUSEN ALI KHAN v DHARAM SINGH [I. L R., 18 All, 31

128. ———— *Transfer of Property Act (IV of 1882)*, *ss 92 and 63—Decree for sale on a mortgage—Order absolute for sale—Civil Procedure Code (1882)*, *ss 291 and 310A.*—Ss 291 and 310A of the Code of Civil Procedure, 1882, will apply to a sale held in virtue of an order absolute for sale passed under s 89 of the Transfer of Property Act, 1882, although no power is given under that Act to postpone the operation of an order under s 89 RAJARAM SINGHJI v. CHUNNI LAL . I L.R., 19 All, 205

But *see* KEDAR NATH RAUT v KALI CHURN RAM . I. L R., 25 Calc, 703

129. ———— *Sale in execution of a decree for sale on a mortgage—Stay of* ...

... and costs (including the costs of the sale) are tendered to the officer conducting the sale, or when it is proved to his satisfaction that the amount of such debt and costs has been paid into the Court that ordered the sale *Rajaram Singhji* v *Chunni Lal*, *I L R*, *19 All*, *205*, followed HARJAS RAI v RAMESHAR I. L R, 20 All, 354

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130. ———— **Liability of legal representative of deceased person**—*Right of bonâ fide purchaser without notice at execution sale*—A *bona fide* purchaser without notice for valuable consideration at an auction-sale is, as a general rule, ...

satisfy himself that the party sued as the representative of the deceased is his legal representative The legal representative of a deceased person, though not a party to the suit, will be bound by the execution sale, if he either knowingly allowed the suit to be defended by another person claiming to be the legal representative, or if, knowing of the sale, he stood by and allowed the purchaser to pay in the belief that he acquired a good title *Edalji Hormasji* v *Mahabu Begum*, *Special Appeal No. 266 of 1869*, considered NATHA HARI v JAMNI [8 Bom, A. C., 37

131. ———— **Decree against widow in representative capacity**—*Right and interest* ...

sale in one place said that the property to be sold was the property of the widow, and in another the rights and interests of the debtor. *Held* that the ...

rights which were expressed, and not those which ought to have been expressed, in the proclamation of sale. BUKSH ALI SOWDAGUR v ESSAN CHUNDER MITTER . . . . W. R., F. B, 119

S C ISHAN CHUNDER MITTER v. BUKSH ALI SOUDAGUR . . . . Marsh, 614

See also COURT OF WARDS v. COOMAR RAMAPUT SINGH . . 10 B L. R., 294

S C GENERAL MANAGER, RAJ DURBUNGHA v RAMPUT SINGH . 14 Moore's I. A., 605 [17 W R., 459

and SOTISH CHUNDER LAHIRY v NILCOMUL LAHIRY . . . I. L. R., 11 Calc., 45

132 ———— **Property sold as right and interest of widow**— ...
—*Right of* ...
quired by.— ...
presence of ...

SALE IN EXECUTION OF DECREE
—*continued.*

11. DECREES AGAINST REPRESENTATIVES
—*continued.*

property in dispute was sold as the right and interest of the widows,—*Held* that the auction-purchaser, under the circumstances of the case, acquired by the purchase the right and interest of the original debtor in the property, though in the sale notification those of the widows were advertised to be sold. TARAKANT BHUTTACHARJEE *v.* LUKHEE DABEA. TARAKANT BHUTTACHARJEE *v.* WISE . . 2 Hay, 8

133. Interest of persons as representatives — *Property wrongly described — Civil Procedure Code, 1859, s. 203.*—Where a property is described at the time of an execution sale as the property of judgment-debtors who were sued as mere representatives of a deceased judgment-debtor, *primâ facie* what is sold is the property of the deceased debtor; and even if the decree is in terms as if it were a personal decree, and does not follow the wording of Act VIII of 1859, s. 203, yet it must be construed as if it was for the debt of the deceased. LALLA SEETA RAM *v.* RAM BUKSH THAKOOR [24 W. R., 383

134. ———— *Contents of application for execution and of notification and proclamation of sale—Sale of interests of minor—Civil Procedure Code, 1859, ss. 212, 249.*—Where an application for execution of a decree omits to give the names of all the parties as required by s. 212, Act VIII of 1859, even if it shall appear from other parts of the proceedings who those parties are, the parties named must be understood to be the parties defendants against whom the execution of the decree is sought. Parties present at a sale are not bound to refer to the decree as laid down in *Ishan Chunder Mitter* v. *Buksh Ali Soudagur, Marsh., 614,* nor must they be considered as knowing its contents unless they are stated in the notification of sale. The proclamation and notification under s 249 are intended to inform persons what is to be sold, and to give the names of the parties defendants whose rights and interests in it are to be sold. In the case of a sale in execution of a decree against a party as a representative of a deceased person, the proper course is to give in the description of the property to be sold the name of the defendant against whom the decree was obtained, and, in describing what was to be sold, to say the right, title, and interest of the defendant as the representative of the deceased. A guardian has no right or interest in a minor's property, and the Courts ought to be extremely careful with regard to allowing the property of minors to be sold in execution of a decree. The purchaser in this case was held to have acquired under his purchase no title to the property of the minor, the property not having been described as the property of the minor. ABDOOL KUREEM *v.* JAUN ALI . . 18 W. R., 56

135. ———— *Guardian not properly appointed—Act XX of 1864—Parties—Mad. Reg. V of 1804—Form of decree.*—J (defendant No. 1) brought a suit (No. 374 of 1861) against the plaintiff's father G. On a mortgage-bond, dated the 2nd April 1856, G having died before any decree was passed, his widow (plaintiff's mother) was substituted as defendant, and a decree was made against her *ex-parte*. It was, however, set aside after her death on the application of M (defendant No. 2), the sister of G, on the ground of want of due service of process upon G and his widow. M was substituted as defendant in the suit, and a new decree was made in her favour. That decree was reversed, on appeal, by the District Court, which allowed J's claim. In execution of the decree of the Appellate Court, the mortgaged property was sold and purchased by J for R250. J obtained certificate of sale headed thus: "J, son of L, plaintiff; G, son of N, deceased, supplement or (substitute) his sister M, defendant;" and it certified that J had purchased "all the right, title, and interest which the said defendant had in the said property." J was put into possession of the property. In 1877 the plaintiff (son of the original mortgagor G) filed the present suit against J and M, alleging that the mortgage-bond on which J had obtained his decree had been forged by J, and contending that the decree and subsequent proceedings under it did not affect his rights, inasmuch as he had not been made a party to them. The prayer in the plaint was that the decree and sale should be set aside and the property restored to his possession. The defence of J substantially was that the suit and appeal were defended by persons who were proper guardians of the plaintiff, and had been in the management of his property. M did not appear. The Subordinate Judge rejected the plaintiff's claim, holding that M was his guardian and manager of his property in the previous suit and appeal, and that the mortgage-bond was genuine. On appeal, that decree was reversed by the District Judge, on the ground that the plaintiff had not been represented in the previous litigation by a guardian duly appointed under Madras Regulation V of 1804, and was no party to it. He accordingly allowed the plaintiff's claim. On second appeal to the High Court,—*Held* that on the death of G the plaintiff was his sole heir; that the equity of redemption in the mortgaged property vested in him; and that the inheritance was wholly unrepresented in the previous litigation, inasmuch as M was not appointed guardian of the plaintiff's person or administratrix of his estate, either under Madras Regulation V of 1804, ss. 2, 19, 23, or under Act XX of 1864; nor was she appointed his guardian *ad litem* in the mortgage suit. *Ishan Chunder Mitter* v. *Buksh Ali Soudagur, Marsh., 614,* distinguished. JATHA NAIK *v.* VENKATAPA . I. L. R., 5 Bom., 14

136. ———— *Sale in execution of a decree against a deceased person represented by a minor son—How far such sale affects interest of an heir not party to decree or execution-proceedings.*—K, a Mahomedan woman, who was a co-sharer in a certain khoti vatan, died indebted, and was sued after her death as "represented by her

SALE IN EXECUTION OF DECREE
—*continued*

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—*continued*

minor son represented by his guardian" A decree having been obtained against *K*, as so represented

He now sued the defendants, who were *K*'s co sharers in the khoti, to recover the profits of *K*'s share which they had received *K* besides her minor son, had left her surviving a daughter who had not been made a party to the suit or to the execution proceedings and the defendants contended that her share in her mother's estate had not passed to the plaintiff *Held* that the plaintiff was entitled to the whole of *K*'s share The debt due by *K* was

...onsible, and the ...ified in of *K*'s ...able by the daughter KHURSHET BIBI *v* KESO VINAYEK

[I L R, 12 Bom, 101

137 ——— Representatives of deceased Mahomedan—*Sale subject to mortgage—Power of heirs to alienate*—The heirs of a deceased Mahomedan mortgaged some property of their ancestor After the mortgage a judgment-

...in law, ...d good ...omedan ...ubject

..., 509

138 ——— ——— *Purchaser of share of estate Rights of—Purchase from some of the heirs—Absent heir, Reappearance of*—*B R*, a Mahomedan, had incurred debts for repairs to a house of which he owned an 8 annas share and after

was sold in execution thereof and purchased by *H* in May 1874 *B R* at his death left also a sister,

against *S* and *H* for possession of the share so purchased by him,—*Held* that *S* did not represent the whole estate of *B R*, and the share purchased by the plaintiff did not pass under the execution sale to *H*, the plaintiff, therefore, was entitled to recover HENDRY *v* MUTTY LALL DHUR

[I L R, 2 Calc, 395

139 ——— *Purchase of interest of some of the heirs—Heir not party to suit—Right acquired by purchaser*—*A*, a Mahomedan,

portion of the property which was situated in Calcutta After *A*'s death the *L* Bank sued his daughter and her husband and two of her husband's brothers in a mofussil Court to realize certain mortgage securities executed by *A* to the Bank and obtained decree by consent Neither the widow nor *B* who was then absent from the country were parties to this suit The Bank in execution of their decree, caused certain property of *A*, including the undivided moiety of the Calcutta property to be sold by the Sheriff of Calcutta The defendant became the purchaser at this sale, and obtained possession of the property The certificate of sale stated that what was sold was "the right title and interest of *A*, deceased the ancestor and of the defendants (naming them) the representatives in a moiety of a piece of land situate," etc *B* afterwards sold and assigned her share in (among other properties) the above mentioned undivided moiety of the Calcutta property to the plaintiff who now sued the purchaser at the execution sale to recover the subject of his purchase *Held* by GARTH C J KEMP and JACKSON JJ (MARKBY and AINSLIE JJ, dissenting) that the decree and the execution founded upon it did not affect the share of *B* in the estate of *A* and consequently that the property in question did not pass to the defendant under the sale made by the Sheriff ASSAMATHEMNESSA BIBEE *v* LUTCHMEEPUT SINGH I L R, 4 Calc, 142

S C ASHRUF ALI *v* LUTCHMIPUT SINGH

[2 C L R, 223

140 ——— *Mahomedan law—Decree against heir of deceased Mahomedan*—Under Mahomedan law, a decree against one heir of a deceased debtor cannot bind the other heirs A

suit A decree was made by consent and in execution of that decree the right title, and interest of the mortgagor were sold The assignee of the sister then sued the purchaser to recover her 6 annas share without making the original mortgagee a party *Held* that the mortgagee was not a necessary party to the suit and that the share of the sister notwithstanding that the right title, and interest of the mortgagor had been sold, was not affected by the sale, and that the plaintiff as her assignee was

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—*continued.*

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—*concluded.*

entitled to recover. SITA NATH DASS *v.* LUCHMIPUT SINGH . . . . 11 C. L. R., 268

141. ———— Mortgage by one of the heirs of deceased—*Direction in will for payment of debts—Decree against heirs for debt of ancestor—Charge on property.*—A testator by his will directed payment of all his debts, and subject thereto devised his property to his heirs. After one of the testator's creditors had obtained a decree against the heirs in their representative capacity, which by its terms was to be satisfied out of the assets left by the testator, one of the heirs mortgaged his share in twelve properties left by the testator. Subsequent to the mortgage, one of the mortgaged properties was sold in execution of the creditor's decree. The mortgagee afterwards brought a suit against the mortgagor and obtained a decree on his mortgage. *Held* that, as neither the direction in the will for payment of debts nor the decree in the creditor's suit created a charge on the property of the testator, the property sold in execution of the creditor's decree had been sold subject to the mortgage, and the mortgagee was entitled to execute his decree against that property. *Bazayet Hossein* v. *Dooli Chund, I. L. R., 4 Calc., 402,* distinguished. RAM DHUN DHUR *v.* MOHESH CHUNDER CHOWDHRY . I. L. R., 9 Calc., 406 : 11 C. L. R., 565

142. ———— *Civil Procedure Code, s. 234—Sale in execution of decree against deceased Mahomedan's estate—Representation of deceased by some only of his next-of-kin—Sale held to be valid.—V,* a Mahomedan woman, died, leaving her husband and several minor children as her representatives. In execution of a money-decree obtained against *V,* the creditor attached certain land which belonged to *V,* and made her husband and two of her children parties to the execution proceedings. The land was sold and purchased by the decree-holder. *Held,* in a suit brought by the children of *V,* to set aside the sale on the ground (*inter alia*) that some of them were no parties to the proceedings in execution, and that the others, being minors at the time, had not been represented by a guardian appointed by the Court, that the sale was valid. KANHAMMAD *v.* KUTTI
[I. L. R., 12 Mad., 90

12. RE-SALES.

143. ———— Defaulting purchaser, Liability of—*Civil Procedure Code (Act X of 1877), ss. 293, 297, 306, 308.*—The provisions of s. 293, Act X of 1877 (Civil Procedure Code), for making a defaulting purchaser at a sale liable for any deficiency on a re-sale, extend to all sales, whether of moveable or immoveable property, and also to re-sales held under ss 29 , 306 and 308. RAMDHANI SAHAI *v.* RAJRANI KOOER
[I. L. R., 7 Calc., 337 : 9 C. L. R 23

SALE IN EXECUTION OF DECREE
—*continued.*

12. RE-SALES—*continued.*

144. ———— Time allowed for payment of purchase-money—*Civil Procedure Code, 1859, s. 251—Discretion of officer conducting sale to allow reasonable time for payment of purchase-money.*—The provisions of s. 251 of the Civil Procedure Code give the officer conducting a sale of moveable property a discretion to allow the purchase-money to be paid at a reasonable time after the sale has been made. FAREED ALUM *v.* SHEO CHARUN RAM . . . . 4 N. W., 37

145. ———— ———— *Civil Procedure Code, 1859, s. 254, Computation of period under.*—In computing the fifteen days allowed for payment of the balance of the purchase-money under s. 254, Act VIII of 1859, the day of sale was excluded. AMANEE BEGUM *v.* KOORBAN ALI 3 Agra, 204

146. ———— Failure of purchaser to pay deposit—*Civil Procedure Code, 1859, s. 254. —Failure to deposit, Re-sale on.*—According to s. 254, Civil Procedure Code, 1859, the property had to be put up again for sale on the purchaser failing to make deposit; and it was the deposit only which could be forfeited, and not any right which a decree-holder might have under his decree. In the case of a re-sale the judgment-debtor is entitled to credit for the full amount bid for his property at the time of the first sale. JOOBRAJ SINGH *v.* GOUR BUKSH LALL . . . . 7 W. R., 110

147. ———— Defaulting purchaser—*Amount leviable from defaulting purchaser—Interest—Civil Procedure Code, 1859, s. 254.*—When the proceeds of an eventual sale were less than the price bid by a defaulting purchaser, the difference was leviable from him under s. 254, Code of Civil Procedure, but was levied without interest. SOORJ BUKSH SINGH *v.* SREEKISHAN DOSS
[9 W. R., 500

See SOORUJ BUKSH SINGH *v.* SREEKISHEN DOSS
[6 W. R., Mis., 126

148. ———— *Failure to pay deposit—Falure to pay balance of purchase-money—Civil Procedure Code, 1859, s. 253.*—The provisions of s. 253, Act VIII of 1859, were held applicable in a case where the re-sale did not forthwith take place on the day of the sale, but on a subsequent date. It was only on failure of a purchaser to pay in the balance of the purchase-money under s. 254, and not on failure of the purchaser to make the deposit required by s. 253, that the purchaser could be compelled to pay up the difference between the first and second sales. AJOODHYA PERSAD *v.* GOPAL DUTT MISSER
[17 W. R., 271

149. ———— *Civil Procedure Code, 1877, ss. 293, 294 -Failure to pay deposit—Re-sale — Redress against defaulter — Bidding without permission of Court—Benami purchase.*—A purchaser of property at a Court-sale who fails to pay the deposit (25 per cent. on the purchase-money) directed to be paid by s. 306 of the Civil Procedure Code is a defaulting purchaser within the

SALE IN EXECUTION OF DECREE —*continued*

12. RE SALES—*continued*

meaning of s 2?3 of that Code and liable as such to make good any deficiency of price which may happen on a re sale and all expenses attending the same JAVHERBHAI v HARIBHAI I L R., 5 Bom, 575

150 ———— *Civil Procedure Code 1859 s 254*—A purchaser at an execution sale having defaulted to pay in the purchase money, the property was ordered to be re sold Before however the re sale took place another sale of the same property was effected at the instance of another judgment creditor but at a lower price than on the first occasion *Held* that there was no re sale such as was contemplated in ss 253 and 254 Act VIII of 1859 and that the first purchaser was not liable for the difference between his bid and the price obtained at the same sale BISOKHA MOYEE CHOWDHRAIN v SONATUN DOSS . 16 W R, 14

151 ———— *Act VIII of 1859 s 254*—In execution of a decree certain property of the judgment debtor was attached and put up for sale and a portion thereof was knocked down to a purchaser for a sum sufficient to satisfy the decree The purchaser however, having made default

his decree by sale of other portions of the attached property than that originally sold. KHEERODA MAYI DASI v GOLAM ABARDARI [13 B L R, 114 21 W R, 149

152 ———— *Civil Procedure Code 1859 s 254*—*Held* by PHEAR J (AINSLIE J *dissentiente*) that if for any good reason the auctioneer at an execution sale under the Code of Civil Procedure does not accept as purchaser the person named by the highest bidder as his principal he cannot make the bidder himself purchaser against his will; he must simply declare that no sale has been effected and reopen the bidding *Held* by PHEAR J (AINSLIE J dissenting) that where the Judge countersigned the certificate of sale in the following terms "*H P*, having made the purchase for R700 stated that he made the purchase for *D K*" he accepted *D K* as purchaser in *H P*s bid and that when a second sale became necessary the difference of price became recoverable from the apparent first purchaser under Act VIII of 1859 s 254 and recourse should first have been had to *D K* who should have been allowed to show cause against an order of payment HUREE RAM v HUR PERSHAD SINGH 20 W R, 80

Held (on appeal under the Letters Patent confirming the judgment of PHEAR J) that the party purchasing at an execution sale under the Civil Procedure Code in the character of an agent cannot be made liable as a principal, and a proceeding upon the contract under s 254 in such a case must be taken against the principal HUREE RAM v HUR PERSHAD SINGH . 20 W R, 397

153 ———— *Civil Procedure Code 1859 s 254*—Where property had been sold under a decree and the purchaser at the execution sale had made default in paying the purchase money, the remedy of the judgment creditor was not limited by s 254 of Act VIII of 1859 to a suit against the defaulting purchaser He was entitled to recover the balance of his debt from his judgment debtor who might perhaps have his remedy against the defaulting purchaser ANANDRAV BAPUJI v SHEKH BABA I L R, 2 Bom, 562

154 ———— *Civil Procedure Code 1882, s 293 Defaulting purchaser answering for loss by re sale—Description of property at sale and re sale Difference of*—The sale contemplated by s 293 of the Civil Procedure Code must be a sale of the same property that was first sold and under the same description and any substantial difference of description at the sale and re sale in any of the matters required to be specified by s 287 to enable intending purchasers to judge of the value of the property will disentitle the decree-holder to recover the deficiency of price under s 293 *Semble*—That even if the difference of description was due to the value of the property having been changed between the sale and re sale owing to causes beyond the control of any person the decree holder if entitled to claim damages against a defaulting purchaser at the first sale must proceed against him by way of suit and not by an application under s 293 BAIJNATH SAHAI v MOHEEP NARAIN SINGH [I L R, 16 Calc, 535

155 ———— *Civil Procedure Code 1882 ss 293 306—Liability of defaulting purchaser*—At a sale in execution of a decree a decree holder who had obtained leave to bid was alleged to have made a bid through his agent of R90,000 but he shortly afterwards repudiated the bid and did not pay the deposit. The property was put up for sale again on the following day under s 306 of the Code of Civil Procedure and was in due course knocked down for a smaller sum The judgment debtor filed a petition under s 293 to re-

156 ———— *Civil Procedure Code s 293—Order for recovery of deficiency on re sale—Right of suit to set aside order—Certificate of amount of deficiency*—*Held* that a suit will lie to set aside an order passed under s 293 of the Code of Civil Procedure *Held* also that the fact that the certificate provided for by s 293 of the Code has not been granted will not prevent the decree-holder or the judgment debtor, as the case may be, from recovering from the defaulter the deficiency

SALE IN EXECUTION OF DECREE —*continued.*

12. RE-SALES—*continued.*

arising on a re sale of property sold in execution of a decree, but not paid for. TAPESRI LAL *v.* DEOKI NANDAN RAI . . . **I. L. R., 19 All., 22**

157. ———— *Civil Procedure Code (Act XIV of 1882), ss. 293, 306, 308, 309, 586 —Auction-sale —"Re-sold"—"Put up to sale," Meaning of—Construction—Default in depositing purchase-money.* S. 293, Civil Procedure Code, extends to re-sales held under ss. 306 and 308, and there is no substantial difference between the words "re-sold" and "re-sale" which occur in ss. 308 and 309 and the words "put up again and sold" which occur in s. 306. *Ramdhani Sahai v. Raj Rani Kooer, I. L. R., 7 Calc., 337,* relied upon. S. 309, Civil Procedure Code, does not apply to a case in which the property is put up again and sold forthwith under the provisions of s. 306, Civil Procedure Code. RAJENDRA NATH ROY *v.* RAM CHUNDER SINGH . . . . . **2 C. W. N., 411**

158. ———— **Re-sale by Collector**—*Suit to set aside sale.*—The plaintiff purchased the right, title, and interest of a judgment-debtor in a certain jumma sold in execution of a Small Cause Court decree. Subsequently the same land was sold by the same creditor in execution of another decree obtained in the Collector's Court, and the defendant purchased. In a suit to set aside the second sale,—*Held* that, when a tenure has once been sold in execution of a decree of a Civil Court, the Collector's Court has no power to put it up again as the property of the former tenant. SAMIRADDI KHALIFA *v.* HARIS CHANDRA

[3 B. L. R., A. C., 49 : 13 W. R., 451 note

WAHID ALI *v.* SADIQ ALI

[12 B. L. R., 487 note : 17 W. R., 417

MOJON MOLLO *v.* DULA GHAZI KULAN

[12 B. L. R., 492 note

PRAN BANDHU SIRKAR *v.* SARBASUNDARI DEBI

[3 B. L. R., A. C., 52 note : 10 W. R., 434

TIRTHANUND THAKOOR *v.* PARESMON JHA

[10 B. L. R., 142 note : 13 W. R., 449

DOWLUT GAZI CHOWDHRY *v.* MUNWAR

[12 B. L. R., 485 note : 15 W. R., 341

159. ———— *Collector, Power of, to set aside sale and to order a re sale.*—A sale of certain property by the Collector in execution of a decree was set aside by the Collector on the application of the decree-holder and a re-sale took place at which the decree-holder purchased the property for R650. The purchase-money was duly paid into Court. Subsequently a third party applied to the Collector to set aside this sale, and offered R800 for the property. The Collector made an order setting aside the sale and ordering a re sale; the biddings at such re-sale to commence at R800. The re-sale accordingly took place. The decree-holder applied to the Subordinate Judge to set aside the re-sale and to confirm the previous sale to her. On reference to the High Court,—*Held* that the re-sale by the Collector was a nullity, and that the question with regard to the confirmation of the previous sale should be dealt with by the Subordinate Judge as if the Collector had issued no orders on the subject. *Ganpatram Motiram v. Isakji Adamji, I. L. R., 15 Bom., 322,* followed. BAI AMTHI *v.* MADHAV MANOR . . . **I. L. R., 15 Bom., 694**

See NARAYAN *v.* RASULKHAN

[I. L. R., 23 Bom., 531

13. PURCHASERS, TITLE OF.

(*a*) GENERALLY.

160. ———— **Title given by sale**—*Implied warranty of title—Caveat emptor.*—In a sale of immoveable property made by a Civil Court in execution of a decree, there is no implied warranty by the execution-creditor of the title of the judgment-debtor, the maxim "*caveat emptor*" applying. DHONDU MATHURADAS NAIK *v.* RAMJI VALAD HANMANTA KAKDA . . . **4 Bom., A. C., 114**

KRISHNAPA VALAD SANTU *v.* PANCHAPA VALAD GURPADAPA . . **6 Bom., A. C., 258**

JUMMAL ALI *v.* TIRBHEE LALL DOSS

[12 W. R., 41

161. ———— *Principle of "caveat emptor."*—Where a party purchases an estate sold in execution after notice that parties other than the judgment-debtor claim rights and interests in the property, the rule of *caveat emptor* applies. SHAHABOODEEN CHOWDHRY *v.* RAMGUTTY CHUCKERBUTTY . . . . **9 W. R., 556**

162. ———— *Ground for setting aside sale—Writ of fieri facias.*—A sale by the Sheriff to a *bonâ fide* purchaser for valuable consideration will not be set aside on the ground that the judgment-creditor had communicated with the Sheriff and desired him to stay the sale. The purchaser need not trace back his title beyond the *fi. fa.* KAMINEE DOSSEE *v.* GOURMONEY DOSSEE

[1 Ind. Jur., N. S., 359

163. ———— *Warranty—Caveat emptor.*—In a sale in the execution of a decree of the rights and interests of a judgment-debtor in an estate of which he is the recorded proprietor in the revenue registers, it is usual to describe such rights and interests in the sale proceedings as recorded in such registers, but such description does not amount on the part of the decree-holder or the officer conducting the sale to a warranty that such rights and interests are correctly described. Where therefore, according to the usual practice, the rights and interests of a judgment-debtor in a share of a village of which he was the recorded proprietor in the revenue registers were proclaimed for sale in the execution of a decree and sold, described as recorded and the sons of the judgment-debtor subsequently sued the auction-purchaser to recover their interests in such share and obtained a decree for such interests, and

SALE IN EXECUTION OF DECREE —*continued*

13 PURCHASERS, TITLE OF—*continued*

the auction purchaser thereupon sued the decree holder for a refund of the purchase-money proportionate to such interests and for the costs of defending such suit —*Held* there being no fraud or misrepresentation on the part of the decree holder, or anything of an exceptional nature showing an express or implied warranty on his part that the suit was not maintainable *Neelkunth Sahee* v *Asmun Matho*, 3 *N W*, 67, distinguished RAM NARAIN SINGH v MAHTAB BIBEE I L R., 2 All, 828

164 ——— *Caveat emptor —Suit to recover purchase money where judgment debtor is found to have no interest* —*K*, the plaintiff purchased a house from *H* on the 16th March 1870 and conveyed it to his wife by deed of gift on 1st [illegible]

[illegible] sion of the house *K* then sued *G* to recover the money paid by him as auction purchaser under *G's* decree. *Held* that the principle of *caveat emptor*" applied and the defendant was not responsible for the plaintiff's mistake in purchasing and paying his money for the house without inquiring into or considering the title to it. KELLY v SETH GOBIND DASS [6 N. W, 168

165 ——— *Suit to recover purchase money — Warranty of title — Caveat emptor — Right of purchaser — Civil Procedure Code 1859, ss 256 257* —The right title and interest of *G* in certain immoveable property was attached and notified for sale in the execution of a money decree held by *T* It was also attached and notified for sale in the execution of a money decree held by *S* and *R* The same date was fixed for both sales The officer conducting the sales first sold the property in execution of T's decree and *T* purchased the property He then sold the property in execution of the decree held by *S* and *R*, and *K* purchased the property The Court executing the [illegible]

[illegible] and *R* to recover his purchase money —*Held* [illegible] tinguishing the suit from the cases in which it had been held that when the right title, and interest of a judgment debtor in a particular property is sold, there is no warranty that he has any right, title, or interest, and therefore the auction purchaser cannot recover his purchase money if it turns out that the judgment-debtor had no interest in the property—that the rule of *caveat emptor* did not apply, and the suit was maintainable The provisions of s 257 of Act VIII of 1859 apply to applications made under s 256 of that Act and to those only *Held* therefore that inasmuch as *K* objected to the confirmation of the sale to him on the ground that the Court was not competent to confirm a sale which had by its previous order been nullified and not on any of the grounds mentioned in s 256 of Act VIII of 1859 *K* was not precluded by the terms of s 257 of that Act from maintaining his suit COURT OF WARDS v GAYA PRASAD I L R, 2 All, 108

166 ——— *Sale in execution set aside— Second sale in execution of a different decree— First sale subsequently confirmed in suit for that purpose—Title of purchasers at first sale Civil Procedure Code (1882), ss 311, 13*[illegible] —Certain immoveable property was sold in execution of a decree but on objections being raised by the judgment debtors under s 311 of the Code of Civil Procedure the sale was set aside After the sale had been thus set aside, the same property was again sold in execution of another decree Subsequently in a suit brought by the purchasers at the first sale (in which suit the judgment debtors, who alone were made defendants confessed judgment) the first sale was confirmed The purchasers at the first sale then sued the purchasers at the second [illegible]

[illegible] suit to which the purchasers [illegible]

[illegible] *L R*, 11 *Bom*, 375 *Konapa* v *Janardan* 11 *Bom*, 193 *Adhur Chunder Banerji* v *Aghore Nath Aroo*, 2 *C W N*, 599 and *Ram Chunder Sadhu Khan* v *Samir Ghazi I L R*, 20 *Calc*, 25 distinguished. *Zain-ul abdin Khan* v *Muhammad Asghar Ali Khan I L R*, 10 *All* 166 *L R*, 15 *I A*, 12 referred to by STRACHEY, C J BANKE LAL v JAGAT NARAIN BANKE LAL v DAMODAR DAS . . . . I L R, 22 All, 168

(b) CERTIFICATE OF SALE

167 ——— Position of purchaser with [illegible]

[illegible] right to a conveyance in virtue of a contract; he

SALE IN EXECUTION OF DECREE —*continued.*

13. PURCHASERS, TITLE OF—*continued.*

does not hold, save as regards the parties to the contract of sale, the position of an owner. When the sale is confirmed, the purchaser is entitled to a conveyance, and until he obtains a conveyance, the property in the estate purchased does not, having regard to rule 431, pass to him so as to give him rights as against parties not bound by the decree under which the sale took place. All that passes to him as against the defendant in that suit is an equitable estate and a right to a conveyance of the property; and therefore as the estate in the property purchased has not passed, the purchaser is not entitled to maintain a suit for partition. In such a suit he could not on partition give a good conveyance to the parties interested in the estate, nor would he be entitled to a declaration of his share in the property. JOHUR MULL KHOORBA *v.* TARANKISTO DEB . . . I. L. R., 10 Calc., 252

168. ——— Title of purchaser without certificate—*Possession—Unregistered certificate of sale—Valid title—Codes of Civil Procedure, Acts VIII of 1859 and XIV of 1882.*—A purchaser of immoveable property at a Court-sale under the Civil Procedure Code, Act VIII of 1859, who has been put into possession by the Court, has thereupon a complete title against all persons bound by the decree, notwithstanding that he has no certificate of sale, or one only which has not been registered. *Rajkishen Mookerjee* v. *Radha Madhub Holdar, 21 W. R., 349,* followed. *Quære*—How far the above ruling will be affected by the language of s. 316 of Act XIV of 1882. SHIVRAM NARAYAN *v.* RAVJI SAKHARAM . . I. L. R., 7 Bom., 254

169. ——— *Suit to recover possession of property purchased.—Semble*—If it is admitted that the plaintiff purchased immoveable property at a Court-sale, he can recover without producing the certificate of sale. SADAGOPA EDINTARA MAHA DESIKA SWAMIAR *v.* JAMUNA BHAI AMMAL [I. L. R., 5 Mad., 54

170. ——— Evidence of title of purchaser—*Sale of immoveable property—Confirmation of sale.*—The order confirming a sale of immoveable property in execution of a decree is sufficient to pass the title in the property to the purchaser, and its production is sufficient evidence of the purchaser's title. The production of the sale certificate is not essential. *Doorga Narain Sen* v. *Baney Madhub Mozoomdar, I. L. R., 7 Calc., 199,* followed. TARA PRASAD MYTEE *v.* NUND KISHORE GIRI [I. L. R., 9 Calc., 842 : 12 C. L. R., 448

171. ——— Completion of title of purchaser—*Payment of purchase-money and confirmation of sale—Civil Procedure Code, s. 316.*—Under s 316 of the Civil Procedure Code (Act X of 1877), the title of a purchaser at a Court-sale becomes complete upon his payment of the purchase-money and confirmation of the sale by the Court. When the sale is admitted, production of a certificate is not necessary to entitle the purchaser to maintain a suit. *Padu Malhari* v. *Rakhmai, 10 Bom., 435; Lalbhai Lakhmidas* v. *Naval Mir Kamaludin Husen, 12 Bom., 247*; and *Harkisandas Narandas* v. *Rai Ichha, I. L. R., 4 Bom., 155,* distinguished. NAIGAR TIMAPA *v.* BHASKAR PARMAYA [I. L. R., 10 Bom., 444

172. ——— *Sale in execution of decree of Revenue Court—Delivery of possession—Act XVIII of 1873 (N.-W. P. Rent Act), s. 76—Act XII of 1881 (N.-W. P. Rent Act), s. 172.*—Property sold in execution of a decree of a Revenue Court vests in the purchaser on completion of the sale and payment of the full price. In order to perfect his title, it is not necessary that he should obtain a sale certificate or should be put into possession by the Collector. *Held* therefore that a suit by a purchaser at a sale in execution of a decree of a Revenue Court for possession of the property was maintainable, although his sale certificate might be an invalid document and the Collector had not put him into possession. MUZAFFAR HUSAIN *v.* ALI HUSAIN [I. L. R., 5 All., 297

173. ——— *Purchaser at execution sale—Suit for possession of property—Proof of title—Act VIII of 1859, ss. 257, 259.*—*Held* that it was not incumbent on a purchaser at an execution-sale under Act VIII of 1859, which was confirmed in his favour under that Act, when suing for possession of the property, to produce a sale certificate, but it was competent for him to prove his purchase *aliunde*. The confirmation of the sale in his favour was *primâ facie* evidence of his title to the property, and was sufficient to pass such title to him, of which a certificate, if afterwards obtained by him, would merely be evidence that the property had so passed. *Doorga Narain Sen* v. *Baney Madhub Mozoomdár, I. L. R., 7 Calc., 199,* referred to. JAGAN NATH *v.* BALDEO . I. L. R., 5 All., 305

KALEE DASS NEOGEE *v.* HUR NATH ROY CHOWDHURY . . . . W. R., 1864, 279

174. ——— *Purchasers at successive execution sales—Purchaser at second sale obtaining certificate of sale and possession of property prior to grant of certificate to purchaser at first sale—Priorities.*—On the 9th December 1876 the plaintiff purchased a house at an auction-sale in execution of a decree against the owner, one *S.* The sale was confirmed on the 9th January 1877, but the certificate of sale was not issued until the 16th June 1880. On the 28th January 1880 the defendant purchased the same house at a sale in execution of a money-decree against *S.* That sale was confirmed on the 28th February 1880, and a certificate was issued on 20th March 1880. The defendant got possession from the judgment-debtor in April 1880. The plaintiff now sued for possession. It was contended for the defendant that, having completed his title under the auction-sale and obtained possession before the plaintiff had taken out his certificate, he had acquired a better title than the plaintiff. *Held* that the plaintiff was entitled to recover. By his prior purchase he had obtained an equitable interest

SALE IN EXECUTION OF DECREE —*continued*

13 PURCHASERS, TITLE OF—*continued*

in the property, although he had not obtained a sale certificate. The defendant therefore purchased subject to the plaintiff's equitable interest, and that title having subsequently been perfected by the issue of the certificate, the plaintiffs were in a position to sue for possession YESHWANT BABURAV *v.* GOVIND SHANKAR I. L. R., 10 Bom., 453

175. ——————— *Certificate of sale granted to the representative of deceased purchaser—Civil Procedure Code (1882), s. 316.*—When a sale in execution has become absolute, the Court can, under s 316 of the Civil Procedure Code (Act XIV of 1882) grant the certificate prescribed therein to the representatives of a deceased purchaser IN RE VINAYAK NARAYAN IN RE DATTATRAYA KRISHNA DATAR I. L. R., 24 Bom., 120

176 ——————— Period from which title of purchaser dates—*Date of sale—Date of confirmation of sale*—The title of a purchaser at a judicial sale which has been confirmed and been made absolute relates back to and takes effect from, the date of the sale, and does not commence only on the date of the confirmation of the sale LUCHMIN NATH *v.* MAHARAJA OF VIZIANAGRAM 7 N. W., 310

177. ——————— *Confirmation of sale—Liability of purchaser for Government revenue*—The defendant became a purchaser at an execution-sale of a share of certain property, of which the plaintiff held another share partly as zamindar and partly as patnidar The sale took place in September 1872 but the defendant did not obtain possession until confirmation of the sale in May 1873 Between the date of the sale and the confirmation a

confirmation of the sale, the share purchased by the defendant must be considered to have vested in her from the date of the sale, and therefore she was liable for the amount of Government revenue in respect of her share which became due between the date of the sale and its confirmation BHYRUB CHUNDER BUNDOPADHYA *v.* SOUDAMINI DABEE [I. L. R., 2 Calc., 141

178 ———

ss 203 and 204 of the Civil Procedure Code (Act VIII of 1859) corresponding with ss. 318 and 319 of the Civil Procedure Code (Act X of 1877) accrued

SALE IN EXECUTION OF DECREE —*continued.*

13 PURCHASERS, TITLE OF—*continued*

chaser counted from the former date. BASAPA *v.* MARYA I. L. R., 3 Bom., 433

179 —

it is not even required to be in writing HIRA AMBAIDAS *v.* TEKCHAND AMBAIDAS [I. L. R., 13 Bom., 670

180 ——————— Unregistered certificate of sale—*Interest of purchaser—Second sale of same*

January 1880, which was registered on the 13th of the same month

same

1875,

mortgagee against the said *C* The defendant had obtained a certificate of sale and was put into possession, but had not then registered the certificate He subsequently obtained another certificate, which was registered in June 1882 In a suit by the

the defendant of the second certificate, which was registered, sufficiently proved that the sale to him had been confirmed CHINTAMANRAV NATU *v.* VITHABAI I. L. R., 11 Bom., 588

181. ——————— Proof of title without pro-

the purchaser, that the sale was duly made by the Court VELAN *v.* KUMARASAMI [I. L. R., 11 Mad., 296

182. ——————— Title of auction purchaser without certificate of sale—*Confirmation of sale,*

SALE IN EXECUTION OF DECREE —*continued.*

18. PURCHASERS, TITLE OF—*continued.*

Effect of.—The plaintiff as an agriculturist sued the defendant to redeem certain land mortgaged to him with possession by her deceased husband. The defendant (the mortgagee) pleaded that he had bought the mortgagor's interest in the property at an auction-sale held in execution of a decree obtained against the mortgagor (the plaintiff's husband), and that therefore the right to redeem was gone. The defendant was, however, unable to produce a certificate of sale, and the Subordinate Judge held therefore that he had failed to prove his title, and accordingly directed that the mortgage account should be taken under the Dekkan Agriculturists' Relief Act (XVII of 1879). The defendant afterwards found his sale certificate, and obtained a review of the above order, but on review the Subordinate Judge confirmed his decision, holding that, as the sale certificate was unregistered, it could not be received in evidence. The defendant then obtained a fresh certificate, registered it, and renewed his application to the Subordinate Judge, who reversed his previous order, and rejected the plaintiff's claim. The plaintiff appealed to the District Judge, who reversed the lower Court's order and remanded the case. On appeal by the defendant to the High Court,—*Held* that the order of the District Judge should be discharged. A sale certificate was not necessary for the purpose of establishing the defendant's title to the property as against the plaintiff. Where property has been sold in execution of a decree, a party to the suit in which the decree has been passed, or his representative, cannot, after the sale has been confirmed, dispute the title of the purchaser at the sale. The order confirming the sale completes the title of the latter as against the former. KHUSHAL PANACHAND *v.* BHIMABAI

[I. L. R., 12 Bom., 589

183. ———— Statement in certificate of sale—*Evidence—Suit to enforce charge against purchaser.*—A statement in a sale-certificate, granted by a Court, that the purchase is subject to a charge, is not conclusive evidence against the purchaser, when it is sought to enforce the charge by suit. RAMACHANDRA JOISHI *v.* HAZI KASSIM

[I. L. R., 16 Mad., 207

184. ———— Purchasers at successive execution-sales—*Title obtained by first purchaser—Certificate of sale obtained by second purchaser before certificate obtained by first purchaser—Priority—Civil Procedure Code (Act XIV of 1882), s. 316—Limitation—Confirmation of sale.*—On 27th February 1886 the plaintiff purchased certain land at a Court-sale held in execution of a decree. On the 10th March 1886 the same property was put up for sale in execution of another decree, and purchased by the defendant. The sale to the defendant was confirmed on 3rd July 1886, and the sale to the plaintiff not until the 21st July 1886. Certificates of sale were issued to both plaintiff and defendant on the same day, *viz.*, on the 2'nd September 1886, and on the 14th February 887 the defendant was put in possession. In 1889 the plaintiff brought this suit to recover possession. The defendant relied on s. 316 of the Civil Procedure Code. He contended that, as under that section the title of a purchaser at a Court-sale vests at the date of the confirmation of the sale to him, his (the defendant's) right was superior to that of the plaintiff, inasmuch as the sale to him was confirmed on the 3rd July 1886, while the sale to the plaintiff was not confirmed until afterwards, *viz.*, on the 21st July. *Held* that the plaintiff was entitled to recover. By his prior purchase he had acquired an equitable or inchoate title to the property which was subsequently perfected by the certificate of sale. Nothing therefore passed to the defendant under the second sale. The words "the title to the property sold" in s. 316 of the Code of Civil Procedure mean the full perfected title arising on the sale becoming absolute. It is that title which under the section does not vest in the purchaser until confirmation. That provision, however, need not necessarily be construed as destroying any lesser interest which arises by reason of general equitable principles. *Quære*—Whether the provision in s. 316 as to the date at which the title of the purchaser is to vest does not apply only as between the parties to the suit and persons claiming through or under them. *Per* JARDINE, *J.*—The reference to parties and persons claiming under them would be surplusage if the Legislature had intended the addition to apply to third parties. DAGDU *v.* PANCHAMSING

[I. L. R., 17 Bom., 375

185. ———— Title of auction-purchaser who has not obtained a certificate of sale—*Civil Procedure Code (1882), s. 316.*—Although the auction-purchaser at a sale held in execution of a decree may not obtain a full title until a certificate has been granted, this must not be considered as necessarily destroying any lesser interest which arises by reason of general equitable principles. *Dagdu* v. *Pancham Singh Gangaram, I. L. R., 17 Bom., 375,* and *Het Ram* v. *Baldeo, Weekly Notes, All. (1894), 54,* approved. CHIDDO *v.* PIARI LAL

[I. L. R., 19 All., 188

186. ———— Certificate of sale—*Civil Procedure Code (Act XIV of 1882), s. 316—Auction-purchaser—Confirmation of possession—Title of auction-purchaser—Suit for damages for cutting trees.*—An auction-purchaser under the Code of Civil Procedure has a good equitable or inchoate title to the property sold, and when the sale certificate is actually granted, it makes the title absolute and makes that title relate back to the date of the sale, so as to warrant him when the sale is confirmed and a certificate granted under s. 316, Civil Procedure Code, in bringing an action for damages for any injury to that property, committed before the confirmation of the sale. So where the defendant cut the trees that stood on a property before the confirmation of its sale,—*Held* that the plaintiff, who is the auction-purchaser of the property, can bring a suit after the date of the confirmation of sale for damages against the defendant for cutting the trees. *Dagdu* v. *Pancham Sing Gangaram, I. L. R., 17 Bom., 375,* and

SALE IN EXECUTION OF DECREE —*continued*

13 PURCHASERS, TITLE OF—*concluded.*

Prangour Mozoomdar v *Hemanta Kumari Debya, I L R 12 Calc, 597,* referred to ADHUR CHUNDER BANERJEE v AGHORE NATH AROO [2 C.W.N, 589

14 DISTRIBUTION OF SALE PROCEEDS

187. ——— **Civil Procedure Code, 1882, s 295 (1859, ss 270, 271)**—*Effect of, on rights by contracts—Object of procedure under those sections*—The purport of ss 270 and 271 of Act VIII of 1859 (with which s 295 of Act X of 1877 ... was not to alter or limit the rights of

... deter ... anding ... there is ... which ... distri ... NNISSA

SATOODA KHANDAN . I L R, 4 Calc, 29

RAJCHUNDER SHAHA v HURMOHUN ROY [22 W.R, 98

188 ——— **(1859, s 270)**—*Property not sold in execution of decree*—S 270 of the Civil Procedure Code did not apply to a case in which property has not been sold in execution of a decree BISHEN CHUNDER SURMA CHOWDHRY v MUN MOHINEE DABEE . 8 W R, 501

BALAJI RAMCHANDRA v GAJANAN BABAJI [11 Bom, 159

189 ——— *Civil Procedure Code (Act XIV of 1882), ss 295, 310A—Bengal Tenancy Act (VIII of 1885), s 174—Sale in execution of decree—Deposit by judgment debtor—Rateable distribution*—S 295, Civil Procedure Code, does not apply to deposit made by the judgment debtor either under s. 174, Bengal Tenancy Act, or under s 310A of Civil Procedure Code BIHARI LALL PAUL v GOPAL LAL SEAL. . . 1 C W.N, 695

190 ——— *Imperfect attachment of immoveable property—Private alienation after such attachment—Civil Procedure Code, ss 274 276, sch IV, No 141*—A judgment ...

... the same judgment debtor preferred applications purporting to be made under s 295 of the Civil Procedure Code, and praying that the proceeds of the sale of the property might be rateably divided between themselves and the attaching creditor The Court refused to remove the attachment until these creditors had been paid It was found that the sale by the judgment debtor was a *bonâ fide* transaction, entered into for valuable consideration *Held* that, inasmuch as no order for attachment of the property was passed in favour of the decree-holders in the manner provided by s. 274 of the Civil Procedure

SALE IN EXECUTION OF DECREE —*continued*

14 DISTRIBUTION OF SALE PROCEEDS —*continued*

... tion of ... were was was valid, and that execution of the decrees could not take place Also *per* MAHMOOD, J—While s 295 ...

to GANGA DIN v KUSHALI I L R, ...

191. ——— *Rights created by s 295, how affected by insolvency and vesting order—Insolvent Act (11 & 12 Vict, c 21), s 49*—An order under s 295 of the Civil Procedure Code affects only interests existing at the time The insolvency of the debtor introduces a new state of ...

v *Russick Lall Mitter, I L R, 15 Calc, 202,* cited HOWATSON v DURRANT [I L R, 27 Calc, 351
4 C W. N., 610

192. ——— *Rateable distribution—Assets realized "by sale or otherwise"*—The words of s 295 of the Code of Civil Procedure, "assets realized by sale or otherwise in execution of a decree," provide only for a case where, by ...

... wise should be construed as meaning by sale in by other process of execution provided for by the Civil Procedure Code SEW BUX BOGLA v SHIB CHUNDER SEN . I L R, 13 Calc, 225

193. ——— *"Assets"*—Moneys paid into Court by sale or otherwise in execution of a decree are assets from the moment of their payment into Court, and are available, under s. 295 of the Code of Civil Procedure (Act X of 1877), for ...

194 ——— *"Whenever assets are realized" Meaning of—Deposit of 25 per cent of purchase money—Assets*—The words "whenever assets are realized" in s 295 of the Code of Civil Procedure really mean "whenever assets are so realized as to be available for distribution among the decree-holders" The 25 per cent of the purchase-money deposited at a sale in execution of a decree is not "assets" within the meaning of

SALE IN EXECUTION OF DECREE —*continued.*

14 DISTRIBUTION OF SALE PROCEEDS —*continued*

order of the 14th September 1833 was not a sale in execution, but a sale in pursuance of a private agreement entered into by the trustees under a liberty reserved to them by the Court, and the fact that the Court sanctioned it made no difference in this respect It did not purport to be a sale of any right, title, or

the Court, or a realization in one of the other modes expressly prescribed by the sections of the Code If the money paid into Court had exceeded the amount due to *P* in respect of her lien, the amount of such excess might perhaps have been treated as a "realization in execution" within the meaning of s 295, but the balance in *W*'s hands was less than the amount due to *P*, and was entirely absorbed by the lien in her favour There was therefore no surplus on which the attachments could operate *Purshotam Dass* v *Mahanant Surajbharthi, I L R, 6 Bom, 588,* and *Sewbux Bogla* v *Shib Chunder Sen, I L R, 13 Calc., 225,* referred to and approved PROSONNO MOYI DASSI v SREENAUTH ROY

[I. L. R, 21 Calc., 809

199. ———— *Right of rival decree holder to show decree of another is barred* —

barred, is competent to see that the decree holder who took out execution does not share in the distribution of the sale-proceeds RADHA GOBIND SHAH v. OOZEER . . . . . 15 W. R., 219

200. ———— *Court to ad-*

201. ———— *Decree of Small Cause Court—Judge sitting as Small Cause Court and as Subordinate Judge* —The Judge of a Court of Small Causes sitting in the exercise of his powers as a Subordinate Judge is not one and the same Court, but two different Courts *Held* therefore that the holder of a decree made by the Judge of a Small Cause Court in the capacity of Subordinate Judge, who had applied to such Judge acting in that capacity for execution of his decree, was not thereby entitled to share rateably, under s 295 of Act X of 1877, assets subsequently realized by sale in execution of a decree made by such Judge in the capacity of Judge of such Small Cause Court. HIMALAYA BANK v HURST . . . I. L. R., 3 All, 710

SALE IN EXECUTION OF DECREE —*continued.*

14 DISTRIBUTION OF SALE-PROCEEDS —*continued.*

202 ———— *Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction—Rateable distribution of assets* —Certain moveable property was at first attached in execution of a money decree passed by a Subordinate Judge in his Small Cause jurisdiction of which a part was afterwards sold In

tion of a money decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdiction, and prayed for rateable distribution of the proceeds along with other decree holders *Held* that the application must be allowed Although a Subordinate Judge invested under Act XIV of 1869, s 28, with Small Cause powers acquires the jurisdic- the Judge of a subordinate

[I L. R., 9 Bom, 174

203 ———— *Rateable distribution of assets—Transfer of application for execution.*—Where property attached in execution of subject Judge's 's Court, in order to share rateably in the assets under s 295 of the Code of Civil Procedure, must apply to the District Court to transfer his application to the subordinate Court. *Gopeenath Acharjee* v *Achcha Bibee, I. L R, 7 Calc, 553,* and *Jetha Madhavji* v *Najeralli Abhramji, I L R, 4 Bom, 472,* approved MUTTALAGIRI v MUTTAYYAR

[I. L. R, 6 Mad, 357

204 ————
more than one judgment-debtor
cedure Code (Ac
of a decree of a Munsif's Court, the plaintiff attached

the Small Cause Court Judge Subsequently the defendant, who held another decree against the same judgment debtor, attached the same sale-proceeds. The Small Cause Court Judge then proceeded, under s 272 of the Civil Procedure Code, to inquire whether the plaintiff was entitled to any priority over the second attaching creditor, and having decided that question in the negative, divided the sale-proceeds rateably between them. In a suit brought by the plaintiff, under the above circumstances, to recover from the defendant the portion of the sale proceeds so paid to him,—*Held* that s 295 of the Civil Procedure Code had no application, inasmuch as the plaintiff had not applied to the Small Cause Court

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

Judge to execute her decree, and it had never been transferred to that Court for execution; and that the proviso in s. 272 is merely intended to mean that any question of title or priority is to be determined by the Court in which or in whose custody the property is, and not by the Court which made the order of attachment. *Held* also that, previous to the order by the Munsif directing the payment to be made to the plaintiff, the Small Cause Court Judge would have had jurisdiction to deal with the question he had tried; but as that order was made prior to the attachment by the defendant, the judgment-debtor had no interest in the money which could be so attached, the effect of that order being to vest the property in the money in the plaintiff, and to take it out of the disposal of the Small Cause Court Judge; and consequently the order for distribution was wrong, and the plaintiff was entitled to the decree she sought. *Quære*—Whether an order made by a Court under s. 272 was intended by the Legislature to be a final order. GOPEE NATH ACHARJE *v.* ACHCHA BIBEE

[I. L. R., 7 Calc., 553: 9 C. L. R., 395

205.——————*Decree in Small Cause suit and decree in regular suit in Subordinate Judge's Court.*—Two decrees were passed against the same defendant in the Court of a District Munsif and on the Small Cause side of a Subordinate Judge's Court in the same district respectively. The holder of the decree in the Small Cause suit attached and brought to sale the judgment-debtor's interest in a benefit fund. The other decree-holder applied for rateable distribution, his decree having been transferred for execution to the Subordinate Judge's Court directly, and not through the District Court. *Held* that the order for rateable distribution was right. KELU *v.* VIKRISHA

[I. L. R., 15 Mad., 345

206.——————*Rateable distribution of assets—Civil Procedure Code, 1877, s. 266—Attachment of salary.*—The salary of a karkun, who was employed in the Second Class Subordinate Judge's Court of Anklesvar, was attached, in execution of a decree of the First Class Subordinate Judge's Court of Surat, by an order issued by the Surat Court, directing the Anklesvar Court to stop and remit every month a moiety of the said karkun's salary to itself (the Surat Court), until satisfaction of the decree. While the decree of the Surat Court was thus in course of execution, another judgment-creditor of the karkun, who had obtained a decree in the Anklesvar Court, applied to it for a rateable distribution of the moiety between himself and the Surat decree-holder, under s. 295 of the Civil Procedure Code, Act X of 1877. *Held* that the application was not sustainable, inasmuch as the decree of the Surat Court was being executed by itself, and not by the Anklesvar Court, to which the order of attachment was sent as the head of a department, or as "the officer whose duty it was to disburse the salary," and not as a Court executing the decree of another Court. KRISHNASHANKAR *v.* CHANDRASHANKAR . . . I. L. R., 5 Bom., 198

207.——————*Attachment—Rateable distribution of assets—Proceeds of sale under decrees of Small Cause Court.*—Certain moveable property was attached in execution of decrees of the Small Cause Court at Ahmedabad. After the attachment, but before the sale of the attached property, other creditors of the same judgment-debtor obtained decrees against him in the Court of the Subordinate Judge at the same place, and applied to it for the attachment of the same property in execution of their decrees. The Subordinate Judge accordingly attached it by prohibitory orders issued to the Judge of the Small Cause Court. After the sale, the holders of the decrees obtained in the Subordinate Judge's Courts claimed a rateable share in the assets realized by the Small Cause Court, under s. 295 of Act X of 1877. *Held* that they were not entitled to any share in the assets until after satisfaction of the decrees of the Small Cause Court. JETHA MADHAVJI *v.* NAJERALLI ABHRAMJI . . I. L. R., 4 Bom., 472

208.——————*Rateable distribution of assets realized in execution.*—*R* obtained a decree against *A* and another in the High Court under its original civil jurisdiction. In execution of that decree, *A*'s property was attached by the Second Class Subordinate Judge of Bijapur, and an order for sale was made. *D* obtained a decree against *A* alone in the Court of the First Class Subordinate Judge of Sholapur, and obtained from that Court an order for the attachment and sale of *A*'s property, which was already attached by the Second Class Subordinate Judge of Bijapur. He then applied to the Second Class Subordinate Judge of Bijapur for rateable distribution of the assets realized under s. 295 of the Civil Procedure Code (Act XIV of 1882). The Second Class Subordinate Judge of Bijapur rejected the application, and he thereupon applied to the High Court. *Held*, following *Jetha* v. *Najeralli, I. L. R., 4 Bom., 472,* and *Krishnashankar* v. *Chandrashankar, I. L. R., 5 Bom., 198,* that *D* was not entitled to share in the assets. DATTATRAYA *v.* RAHIMTULLA NURMAHOMED KHOJA

[I. L. R., 18 Bom., 456

209.——————*Property attached in execution of decrees of Small Cause Court and High Court—Execution-proceedings in Small Cause Court transferred to High Court—Rateable distribution of assets realized in execution.*—The plaintiffs obtained a decree in the High Court against the defendant, and in execution attached goods in the defendant's shop. These goods, however, were already under attachment in execution of certain decrees obtained in the Small Causes Court against the defendant. On the 4th September 1895, by an order of the High Court made on the application of the plaintiffs, the execution-proceedings in the Small Cause Court suits were transferred to the High Court, and

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—continued.

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it was ordered that the attached property should be realized by the High Court. The records of the execution proceedings in those suits were lodged in the Prothonotary's office On the 26th September 1895 the decree holder in one of the Small Cause

subsequently (under the rules of the Sheriff's office)

ALI . . . . I. L. R., 20 Bom., 377

decree holder in execution of his decree against the same judgment debtor. TIRUCHITTAMBALA CHETTI v. SESHAYYANGAR . I. L. R., 4 Mad, 383

211.——————*Rateable distribution of assets, Preliminaries to right to share in —Prior application for execution requiring amendment.*—The circumstance that the petition of one of several decree-holders in applying for execution requires amendment because of the list of property being incomplete, is no ground for declaring such application to be superseded by a later application, made before the completion of the necessary amendment, by another co-decree-holder for execution. AHMED CHOWDHRY v. KHATOON 7 C. L. R, 537

212.——————*Rateable distribution of assets, Preliminaries to right to share in* —Several decree-holders executing various judgments, for the most part of very ancient date, against the estate of one R, were in contest in respect of the proceeds of a Government promissory note, which had long been under attachment, but was eventually sold with accumulated interest for R69,000, in accordance with an expression of the High Court's opinion upon appeals presented by two of the decree-holders Upon

and S), who were acting jointly in execution, and the

surplus to be rateably divided among the other execution creditors One of these then brought a suit to establish a preferential claim *Held* that *K K*, who, as soon as it was ascertained that the fund might be so made use of, first applied for the sale of it, was the person who came under the Code of Civil Procedure, s 270, and was entitled to payment in full, and that *B* and *S* had been overpaid, and were liable to repay the surplus to the other decree holders. SHISH CHUNDER SIRCAR CHOWDHRY v. SHIB NARAIN PAL SHIB NARAIN PAL v KOONJO KAMINEE DABEE . . 22 W. R., 466

213.——————*Order as to proceeds on application of third party* —An order by a Principal Sudder Ameen made on the application of a third party, that certain sale-proceeds which he had already directed to be rateably distributed among certain decree holders should be withheld from one of them, was held to have been made without jurisdiction MAHARAJAH OF BURDWAN v HEERALALL SEAL [11 W. R., 54

S. C. IN THE MATTER OF THE PETITION OF DHIRAJ MAHTAB CHAND BAHADOOR [2 B. L. R., A. C, 217

214.——————*Rival decree-holders—Claimants under same decree* —S 270, Act VIII of 1859, applied only to rival decree-holders claiming under different decrees, and not to persons claiming under the same decree. ABID ALI v. MUNNOO BYAS . . . . 2 Agra, 183

215——————*Separate sales in execution of decrees* —Application was made for execution of a decree for money against *R* and also for execution of a decree for money against *R* and another person jointly and severally Certain immoveable property belonging to *R* was sold in execution of the first decree, the assets which were realized by such sale being sufficient to satisfy the

RAM v. CHIRANJI LAL . I. L. R., 3 All., 579

216.——————*Rateable distribution of sale proceeds—Same judgment-debtor—Sale in execution of decree—Execution-proceedings.*—Where a judgment-creditor has obtained a decree against two judgment debtors, *A* and *B*, and in execution of that decree has attached and caused to be sold joint property belonging to such judgment-debtors, another judgment creditor holding a decree against *A* alone, who has also applied for execution, is not entitled to claim under the provisions of s 295 of the Civil Procedure Code to share rateably in the sale-proceeds, the decree not being against the same judgment debtor, and a Court having no power in execution proceedings

to ascertain the respective shares of joint judgment-debtors. In *Shumbhoo Nath Poddar* v. *Luckynath Dey, I. L. R., 9 Calc., 920*, it was not intended to lay down that a person who has obtained a decree for money against a single judgment-debtor is entitled to come in and share rateably with a person who has obtained a decree against the same judgment-debtor and other persons. DEBOKI NUNDUN SEN *v.* HART . . I. L. R., 12 Calc., 294

217. ———————— *Decree-holders sharing rateably in sale-proceeds must be bonâ fide decree-holders.*—The words "decree-holders" or "persons holding decrees for money against the same judgment-debtor" in s. 295 of the Code of Civil Procedure signify *bonâ fide* decree-holders. A Court is bound, in cases falling within this section, to satisfy itself whether the claimants are *bonâ fide* decree-holders within the meaning of the section; and where it is unable to satisfy itself as to the *bonâ fides* of the claim, the Court should exclude such claimant from the distribution of assets. IN RE SUNDER DASS [I. L. R., 11 Calc., 42

218. ———————— *Rateable distribution—Creditor with joint decree.*—Where property belonging to *A* has been attached under a decree, and other decree-holders than the attaching creditor have applied before realization of assets to participate in the sale-proceeds, and amongst them a creditor who has obtained a decree against *A* and *B*, such latter creditor is entitled, under s. 295 of the Civil Procedure Code, to share in the proceeds of the sale of *A*'s property. SHUMBHOO NATH PODDAR *v.* LUCKYNATH DEY . . . I. L. R., 9 Calc., 920

219. ———————— *Decree, execution of, by several judgment-creditors against one and the same judgment-debtor—Rateable distribution.*—The plaintiff obtained a decree against two persons *P* and *S* for a sum of money, and one of the defendants obtained another decree against *P* and *R*, the latter being the father of *S*, and some other defendants also obtained decrees against all those three persons. The plaintiff now brought a suit claiming to have a share of the amount realized by the sale of the properties of *P*, the common judgment-debtor under the three decrees, by rateable distribution for the liquidation of his decree, not a farthing of which was realized, although the decrees of the defendants had been partly realized from judgment-debtor other than *P*. It appeared that the properties of *P* were specified in the execution proceedings and in the sale proclamation separately and the amount realized by the sale of his properties was separately stated. *Held* that no question of the ascertainment of the shares of the judgment-debtors or of the application of the "principle of marshalling" arose in this case, and that the plaintiff was entitled to ask for a refund of the money paid to the defendants, under s. 295 of the Code of Civil Procedure, out of the assets realized by the sale of the properties of *P*. *Deboki Nundun Sen* v. *Hart, I. L. R., 12 Calc., 294*, distinguished: *Shumbhoo Nath Poddar* v. *Lucky Nath Dey, I. L. R., 9 Calc., 920; Nimbaji Tulsiram* v. *Vidra Venkata, I. L. R., 16 Bom., 683*, referred to. That it is only the unsatisfied portion of the decree that ought to be taken into account in a question of rateable distribution, there being no reason why any amount should be set apart in favour of a decree-holder in proportion to any sum covered by his decree which has already been realized. SARAT CHANDRA KUNDU *v.* DOYAL CHAND SEAL . . 3 C. W. N., 368

220. ———————— *Rateable distribution of sale-proceeds—Same judgment-debtors—Separate and joint judgment-debtors—Marshalling of assets between decree-holders—Decree of Small Cause Court, Transfer of.*—The plaintiffs in this suit obtained a decree against all three defendants *A*, *B*, and *C*. In execution of such decree, they attached two sets of securities: (i) municipal bonds, the joint property of *B* and *C*; and (ii) Government loan notes, the property of *C* alone. These were sold by the Sheriff, but, before they were so sold, the holders of decrees in two other High Court suits came in and applied to the High Court for execution of their decrees, which decrees were against *C* alone. These last-mentioned decree-holders now claimed to participate rateably with the plaintiffs in this suit in the realized proceeds of both the above-mentioned securities. The plaintiffs in this suit contended that such decree-holders, having decrees only against *C*, were not claiming against "the same judgment-debtors" as themselves within the meaning of s. 295 of the Civil Procedure Code. *Held* that, as regards the proceeds of the Government loan notes, the sole property of *C*, the plaintiff's decree and the other two decrees were all decrees "against the same judgment-debtors," and that therefore, as regards that fund, all three sets of decree-holders were equally entitled and must share therein rateably. *Held* further that, as regards the other fund, the proceeds of the property of *B* and *C* only, the plaintiffs in this suit were entitled thereto, since the other decree-holders had no decrees against *B* and *C*, and therefore not "against the same judgment-debtors" as was the decree of the plaintiffs. *Held* further that the plaintiffs having two funds to proceed against, whilst the other decree-holders had but one of these two, the equitable principle of marshalling should be applied, and the plaintiffs required to satisfy themselves as far as possible out of the fund not available to the other decree-holder, before they had recourse to the other fund common to all, and as regards the latter fund the plaintiffs should claim against the same only as creditors for the then unsatisfied balance of their debt rateably with such other decree-holders. *Shumbhu Nath Poddar* v. *Luckynath Dey, I. L. R., 9 Calc., 920*, and *Deboki Nundun Sen* v. *Hart, I. L. R., 12 Calc., 294*, considered and followed. Another holder of a decree—a Small Cause Court decree passed against all three debtors *A*, *B*, and *C*—had previously to the said attachments by the Sheriff in this suit himself attached the same securities through the

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Small Cause Court He did not, however, at any time get his decree transferred to the High Court. He now came in in these execution-proceedings and

share in either fund *Muttalgiri* v *Muttayyar, I L R, 6 Mad, 357*, followed. NIMBAJI TULSIRAM *v.* VADIA VENKATI I. L. R., 16 Bom, 683

221. ———————— and s. 285—*Attachment by Small Cause Court—Transfer of decree to superior Court*—Practice of the Calcutta High Court in favour of the principle of rateable distribution amongst all the attaching creditors, without any such condition as the transfer of the execution proceedings to the superior Court, adopted and held supported by the cases of *Gopee Nath Acharje* v *Achcha Bibee, I L. R, 7 Calc, 553*, *Bykant Nath Shaha* v. *Rajendro Narain Rai, I L R, 12 Calc, 333*, and *Bhugwan Dass Bogla* v *Bunko Behary Bajpie, Suit 130 of 1884*, unreported. *Muttalagiri Nayak* v *Muttayyar I. L. R, 6 Mad, 357*, and *Nimbaji Tulsiram* v. *Vadia Venkati, I. L R, 16 Bom, 683*, not followed CLARK *v.* ALEXANDER I L R, 21 Calc, 200

HAR BHAGAT DAS MARWARI *v* ANANDARAM MARWARI . . . 2 C W. N, 126

so that the decree-holder, who has been permitted under the former section to purchase the property in execution of his own decree, must share the proceeds of the sale rateably with such competing decree holders, and will not be allowed to set off the purchase-money against the amount due to him on his decree SHRINIVAS *v.* RADHABAI . I. L. R, 6 Bom, 570

223.———————— *Rateable distribution—Decree-holder for unascertained mesne profits who has applied for execution, Right of—Civil Procedure Code, 1882, s 294.*—The holder of a decree for unascertained mesne profits who has applied to the Court to ascertain the amount thereof and to attach immoveable property under s. 255 within the are rateably ets realized. [illegible] give effect to both sections the receipt to be given by the decree-holder, who has obtained leave to bid from the Court and has purchased the property sold, can only be accepted for so much of the judgment-debt as the assets applicable to its discharge may suffice to satisfy VIRARAGAVA AYYANGAR *v.* VARADA AYYANGAR . . . I. L. R., 5 Mad., 123

14 DISTRIBUTION OF SALE-PROCEEDS
—continued

224. ———— ———— *Sale in execution for creditor who has not attached.*—Where the sale-proceeds of a portion of several parcels of property are sufficient to satisfy the decree of a judgment creditor who has attached the property, another judgment creditor, although he has not attached the property, is still entitled to have the remainder of the property sold to satisfy his decree under the provisions of s 295 of the Civil Procedure Code. MEGH LALL POOREE *v* SHIB PERSHAD MADI [I. L. R., 7 Calc, 34

S C, MEGH LAL POOREE *v.* MOHAMMED DUTT JHA . . . 8 C. L R., 369

225. ———————— *Rateable distribution—Civil Procedure Code, 1882, s 266*—One *C* obtained a decree against *L* and *M* for rent due from them, and, in execution thereof, applied for the attachment and sale of two houses, with their compounds and the ground underneath them (in respect of

under *C*'s decree for rent On the realization of the sale-proceeds, *D* applied, under s. 295 of Act X of 1877, for a rateable proportion of the assets realized by the sale of *M*'s property in execution of *C*'s decree *Held* that *D* was not entitled to such rateable proportion of the assets. MANIKLALL *v.* LAKHA MANSING . I. L R., 4 Bom, 429

the proceeds of such sale the amount of Court fees *J* would have had to pay had he not been allowed to sue as a pauper, the principle that Government takes precedence of all other creditors not being liable to an exception in the case of lien-holders The decision in *Ganpat Putaya* v *Collector of Kanara, I L R, 1 Bom, 7*, applied in this case COLLECTOR OF MORADABAD *v.* MUHAMMAD DAIM KHAN . . . I. L. R., 2 All., 196

227. ———————— (1859, s. 271)—*Property sold subject to mortgage*—The proviso of s. 271 of Act VIII of 1859 was intended to apply

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to a case where the property is actually sold subject to a mortgage, and where the transaction is such that the purchaser is buying only the equity of redemption; it did not apply to a case where there is merely the right by law in the mortgagee to enforce his mortgage against the purchaser. FAKEER BUX *v.* CHUTTURDHAREE CHOWDHRY
[12 B. L. R., 513 note: 14 W. R., 209

FUTEH ALI *alias* NANNA MEAH *v.* GREGORY
[6 W. R., Mis., 13

JOY CHUNDER GHOSE *v.* RAM NARAIN PODDAR
[21 W. R., 43

See PURMESSUREE DOSSEE *v.* NOBIN CHUNDER TARUN . . . . . 24 W. R., 305

228. ———— *Right of mortgagee who has obtained money-decree to share in surplus proceeds.*—Where a mortgagee suing upon his bond obtains a money-decree without any declaration of lien, he is in the same position as if he had not taken any mortgage at all; and in taking out execution his claim to a rateable distribution of surplus sale-proceeds of attached property is founded upon s. 271 of the Civil Procedure Code, 1859. RADHA KANT ROY *v.* SADAFUT MAHOMED KHAN
[21 W. R., 86

229. ———— *Right of mortgagee to take residue of sale-proceeds and retain his lien as mortgagee.*—Plaintiff in a suit on an instalment-bond on which he had obtained a money-decree, having asked for and obtained the residue of the sale-proceeds after all the judgment-creditors had been fully satisfied, was held not to have abandoned his right as mortgagee. BOLAKEE LAL *v.* CHOWDHRY BUNGSEE SINGH . . . 7 W. R., 309

230. ———— *Execution of decree—Attachment by mortgagee—Surplus proceeds.*—Pending a suit against *A* and *N* upon a bill of exchange, *A* deposited with the plaintiff, as security for the amount due upon the bill, the title-deeds of property belonging jointly to *N* and himself. The plaintiff subsequently got a decree for the amount due upon the bill. Thereafter one *S*, in execution of a decree against *A* and *N*, attached certain property of theirs, including the mortgaged property, and caused it to be sold; and the surplus sale-proceeds, after satisfaction of *S*'s decree, were paid into Court to the credit of his suit. Intermediately between this attachment and sale, the plaintiff also attached under his decree on the bill of exchange the mortgaged and other property of *A* and *N*, and after the plaintiff's attachment *N* ratified the equitable mortgage made by *A*. The sale under *S*'s attachment having taken place, the plaintiff sued *A* and *N* and the purchasers at such sale of the mortgaged property for foreclosure or sale thereof, and obtained a decree declaring that he had a good equitable mortgage of *A*'s share in the joint property, and for an account and sale in default of payment; and the plaintiff subsequently, on 26th May 1873, got an order under his decree upon the bill of exchange for payment to him of the surplus sale-proceeds lodged in Court to the credit of *S*'s suit, and for sale of certain of the properties, other than the mortgaged property, which he had attached. Under this order the money was paid out to the plaintiff, and the properties were advertised for sale. MACPHERSON, *J.*, having, on an application by *A*, set aside this order and directed that the plaintiff should refund into Court the money paid out to him, and that the sale should be stayed, the Court on appeal refused to set aside the order of the 26th May but made the plaintiff undertake to pay into Court the mortgage-money with interest if the same should be received by him from the defendants in the mortgage-suit. BANK OF BENGAL *v.* NUNDOLALL DOSS
[14 B. L. R., 509

231. ———— *Satisfaction of mortgage-lien out of surplus proceeds.*—Where seven different properties belonging to the same mortgagor had been hypothecated to three different persons, and all of them sued upon their bonds and obtained decrees which were followed by simultaneous sales in execution,—*Held* that, as all the properties were sold at the instance of all the mortgagees for the satisfaction of their decrees, and therefore of their respective mortgage-liens, and the decrees of the mortgagees should be satisfied out of the entire sale-proceeds in the order in which the liens on the properties had been created. GOPEE SING *v.* KISHA LALL . . . . . 25 W. R., 187

232. ———— *Provisoes—Lis pendens—Sale subject to mortgage.*—Where two mortgagees, in execution of their several decrees, attached the same property, of which a moiety without further specification was respectively mortgaged to each of them, and subsequent to the attachments the property was sold in execution of one of the decrees,—*Held* that, notwithstanding the whole interest of the mortgagor was intended to be sold, the purchaser took one of the moieties subject to the lien of the unsatisfied mortgagee, and that omission or neglect on the part of the Court executing the decree to give specific direction as provided by cl. (*b*) of s. 295 of the Civil Procedure Code did not prejudice the rights of the unsatisfied mortgagee or discharge his incumbrance. JANOKY BULLUBH SEN *v.* JOHIRUDDIN MAHOMED ABU ALI SOHER CHOWDHRY
[I. L. R., 10 Calc., 567

233. ———— *Mortgage—Allowance of set-off of purchase-money against amount of decree—Suit for share of sale-proceeds—Principle of distribution.*—In execution of a decree against *M*, the plaintiff attached and advertised for sale certain property in mouzah A. At that time there were pending proceedings in execution of two other decrees obtained against *M* by the first and second defendants respectively. These two decrees were obtained on a bond executed by *M*, by which an 8 annas share of mouzah A was

hypothecated as collateral security, and in execution of these decrees the defendants brought to sale, and themselves purchased, not an 8 annas share only, but the whole of mouzah A, and were allowed by the Court to set off the purchase-money against the amounts due to them under their decrees At the same time, the plaintiff's execution case was struck off on 30th June 1880. In a suit brought by the plaintiff under s 295 of the Civil Procedure Code for his share of the sale proceeds of mouzah A, in which the defendants contended that, a set off having been allowed to the defendants, the plaintiff was not entitled to any rateable distribution, and that, if any rateable distribution were allowed, they were entitled to have an allowance made in respect of a mortgage which the plaintiff held in a 2 annas share of mouzah A, which they had paid off subsequently to the transactions now in question,—*Held* that the fact of the set-off being allowed in exercise of the power given in s 294 of the Code, instead of actual payment into Court, did not alter the substantial nature of the transaction, so as to render the purchase money less applicable to the satisfaction of the debts of other attaching creditors *Held* further that the defendants were not entitled to deduct the sum paid by them to clear off the plaintiff's mortgage from the amount of the purchase

made TAPONIDI HORDANUND BHARATI *v.* MATHURA LALL BHAGAT . I. L. R., 12 Calc., 499

234. ———————— *Decree for money—Causes of action—Mortgage-decree—Mortgagee purchasing under his own decree, Execution of decree by*—The cause of action given by the last paragraph but one of s. 295 of the Civil Procedure Code does not arise until the money has been actually paid over to the person who is alleged not to be entitled to receive the same, and a suit brought by a person claiming to be entitled to be paid a share of sale-proceeds under that section, and to recover the same from another to whom such sale-proceeds have been ordered to be paid, if brought before they have been actually paid to such ot

the decree, and the holder of such decree is entitled to claim rateable distribution of sale proceeds with holders of decrees for money only under that section. There is nothing in s. 295 which takes away the right from a mortgagee who has obtained a decree upon his mortgage to proceed against the property of his mortgagor other than that subject to his mortgage. Thus the holder of a mortgage decree which directs that the amount be realized from the mortgaged property and from the mortgagor per-

sold at auction not being alone sufficient to prove its value,—and this ought to be inquired into most carefully by the Court to which an application is made to further execute the decree or to share rateably under s. 295 HART *v* TARA PRASANNA MUKHERJI . . . I. L. R., 11 Calc., 718

235. ———————— *Mortgage—First and second mortgagees—Sale of mortgaged property in execution of decree of second mortgagee—Suit by first mortgagee for re-sale of pro-*

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the same Court On the 20th June 1878 the property was put up for sale in execution of the second mortgagee's decree The first mortgagee subsequently brought a suit for a re sale of the property in satisfaction of his decree. *Held* that this was the only course open to him, and he could not have enforced satisfaction of his decree in accordance with the provisions of s. 295 of the Civil Procedure Code, inasmuch as the provisions of the first and second

JAGAT NARAIN RAI *v.* DHUNDHEY RAI [I. L. R., 5 All., 566

See GUR SAHAI *v.* RAM DIAL . 7 N. W., 91

236. ———————— *Mortgage—Sale by first mortgagee—Arrears of rent—Lien—Claim by puisne mortgagee on proceeds of sale*—Certain land was mortgaged to *A* with possession to secure the repayment of a loan of R2,000 and interest. It was stipulated in the deed that the interest on the debt should be paid out of the profits, and the balance paid to the mortgagors By an agreement subsequently made it was arranged that the mortgagors should remain in possession and pay rent to *A*. *A* obtained a decree for R2 00 and arrears of rent and costs, and for the sale of the land in satisfaction of the amount decreed The land was sold for R2,835 in March 1881. In May 1881 *B*, a puisne

SALE IN EXECUTION OF DECREE —*continued.*

14. DISTRIBUTION OF SALE-PROCEEDS —*continued.*

mortgagee, applied to the Court for payment to him of R500 of this sum, alleging that *A* was *entitled only to* R2,000 *and* R280 *costs, but not* to arrears of rent, in preference to his claim as second mortgagee. The claim of *B* was rejected on the 27th May 1881 and the whole amount paid out to *A*. In February 1882 *B* (who had filed a suit on the 23rd March 1881) obtained a decree upon his mortgage. On the 23rd May 1884 *B* sued to recover R510 paid to *A* on account of rent on the 27th May 1881. The lower Court dismissed the suit on the grounds (1) that *A* was entitled to treat the arrears of rent as interest, and (2) that the suit was barred by limitation. *Held* on second appeal that *B* was entitled to recover the sum claimed. SIVARAMA *v.* SUBRAMANYA

[I. L. R., 9 Mad., 57

237. ———————— The meaning of s. 295 of the Civil Procedure Code is that, when immoveable property is sold in execution of decrees ordering its sale for the discharge of incumbrances, the sale-proceeds are to be applied in satisfaction of incumbrances according to their priority. SHAHI RAM *v.* SHIB LAL . . **I. L. R., 7 All., 378**

238. ———————— *Execution of decree—Payment out of proceeds before confirmation of sale—Interest on purchase-money from date of sale to date of confirmation—Civil Procedure Code, 1882, ss. 284, 315.*—Although there is no express provision in the Code laying down that a decree-holder may take out of Court the proceeds of an execution-sale before the date on which the sale is confirmed, yet s. 315 of the Code implies that this may be done. The Court, however, under special circumstances, may refuse to pay over to the decree-holder the purchase-money until the sale is confirmed, but in such case it should provide for due payment of interest on the money detained. *Held* that, under the special circumstances of this case, the decree-holder was not entitled to receive interest from his judgment-debtor from the date of the sale to the date on which the sale was confirmed. JOGENDRO NATH SIRCAR *v.* GOBIND CHUNDER ADDI

[I. L. R., 12 Calc., 252

239. ———————— *Execution-proceedings — Rateable distribution — Application for further execution—Notice—Civil Procedure Code, 1882, s. 622.*—*A*, and subsequently *B*, obtained decrees against *X*, in execution of which the same land was attached, and *B* obtained an order for rateable distribution. Neither decree was satisfied. *A* then applied for attachment of other property, and the sale was fixed for 28th September. On 25th September *B* filed a petition for further attachment under ss. 250, 274, and also a petition for reteable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held* on appeal that the petition for execution was wrongly rejected, but that the High Court could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution. The proper remedy was by a suit. VENKATARAMAN *v.* MAHALINGAYYAN

[I. L. R., 9 Mad., 508

240. ———————— **and s. 276**—*Claim to rateable distribution under s. 295—Sale pending attachment.*—A claim under s. 295 of the Civil Procedure Code is not enforceable as an attachment against which an assignment is rendered void by the provisions of s. 276. *Ganga Din* v. *Khushali, I. L. R., 7 All., 702,* followed. DURGA CHURN RAI CHOWDHRY *v.* MONMOHINI DASI

[I. L. R., 15 Calc., 771

241. ———————— **and s. 294**—*Suit for refund of rateable amount.*—*M* and *C* each obtained a decree against the same judgment-debtor and applied for execution. *C*, in execution of his decree, attached certain immoveable property, and, with the permission of the Court, purchased the same under s. 294 of the Code of Civil Procedure and set off his purchase-money against the decree. *M* claimed that the proceeds of the sale to *C* should be rateably distributed under s. 295 of the Code, and that *C* should either elect to have the property re-sold or pay into Court the rateable proportion due to *M*. *C* objected to a re-sale or to pay. *Held* that *C* might be compelled to refund the rateable amount due to *M* by summary process in execution. MADDEN *v.* CHAPPANI . . . **I. L. R., 11 Mad., 356**

242. ———————— **and ss. 235, 490**—*Application for execution, Necessity of, in order to share in distribution under s. 295—Attachment before judgment, Effect of—Decree-holder with an attachment before judgment, Omission by, to apply for execution under s. 235, effect of, on right to share in distribution.*—A decree-holder who has attached before judgment is not entitled to rank under s. 295 of the Civil Procedure Code (Act XIV of 1882) as an applicant in execution, and as such to obtain in execution a rateable share of the property which he has attached, unless, subsequently to his decree, he has applied for execution under s. 235 *et seq.* of the Civil Procedure Code. S. 490 of the Civil Procedure Code does not by implication confer upon a decree-holder who has attached before judgment the right to come in under s. 295 and share in the distribution of the property which he has attached. The effect of that section is merely to take away the necessity for a re-attachment of the property. The attachment before judgment enures and becomes an attachment in execution. PALLONJI SHAPURJI *v.* JORDAN . . . **I. L. R., 12 Bom., 400**

243. ———————— *"Decree for money"—"Same judgment-debtor"—Decree for enforcement of lien and against judgment-debtor personally—Decree-holder entitled to proceed against property or person as he may think fit.*—*U* held a money-decree against *B*, *P*, and *R*, in execution whereof he caused to be attached and sold certain

SALE IN EXECUTION OF DECREE
—continued

14 DISTRIBUTION OF SALE PROCEEDS
—continued

property belonging to *B* *D* held a decree against *B*, *P*, *R*, and *S* which, so far as *P*, *B*, and *S* were concerned, was a decree for enforcement of hypothecation by sale of the judgment-debtor's property, but which did not
to *B*
Procedu
rateably
Held that, there being no question of fraud in the case, *D* was entitled to enforce his decree in the first instance against the property of *B*, that his decree

Nath Poddar v *Lucky Nath Dey*, *I. L. R*, *9 Calc*, *920*, referred to. *Debokı Nundun Sen* v. *Hart*, *I. L R.*, *12 Calc*, *294*, *Jagat Narain Pal* v *Dhundhey Rai*, *I L R*, *5 All*, *566*, and *Hart* v. *Tara Prasanna Mukerji*, *I L R*, *11 Calc*, *718*, distinguished DELHI AND LONDON BANK *v* UNCOVENANTED SERVICE BANK, BAREILLY

[I. L. R, 10 All., 35

244. ———— *Rateable distribution—Decree for money—Mortgage decree* —The plaintiff and defendant respectively, held successive mortgages on the same land The defendant obtained a decree on his mortgage against

mortgage premises and attached other property of the

the property attached, the plaintiff applied, under the Civil Procedure Code, s 295, for rateable distribution, which was refused. The plaintiff then brought to sale the mortgage premises, which did not realize the amount of the debt, and he now sued to recover the sum which would have been payable to him under s. 295 *Held* that the plaintiff's decree was a "decree for money" within the meaning of s 295, and that he was entitled to recover the sum claimed *Per curiam* —The property ought not to have been sold and the money paid to the defendant until the mortgaged property had been sold and had been found insufficient to pay his debt. KOMMACHI KATHER *v.* PAKKER

[I. L. R., 20 Mad, 107

245 ———— *Rateable distribution—Assets realized in execution* —*A*, *B*, and *C* held money-decrees against the same judgment-debtor. *A* attached by a prohibitory order dated in December funds of the judgment-debtor in the hands of *D*. In January *B* attached in execution the same funds. In February they were paid into Court, and subsequently on the same day *C* attached them as money due in the custody of the Court *Held* that the funds should be rateably distributed between *A* and *B*, and that *C* was not entitled to participate therein. SRINIVASA AYYANGAR *v.* SEETHARAMAYYAR

[I. L. R., 19 Mad., 72

246. ———— *Decree-holder, Purchase by—Satisfaction pro tanto—Mortgagee not trustee for mortgagor in sale proceeds.*—A mortgagee who has obtained a mortgage decree, and after obtaining permission to bid at the sale held in execution of such decree has become the purchaser, does not stand in a fiduciary position towards
inna Mukerji,
A mortgagee
ty to take out
further execution for any balance of the amount decreed that may be left after deducting the price for which the mortgaged property was sold, and is not bound to credit the judgment-debtor with the real value of the property to be ascertained by the Court SHEONATH DOSS *v* JANKI PROSAD SINGH

[I. L. R., 16 Calc., 132

247. ———— *Execution—Decree—Rateable distribution of proceeds of decree—Power of Court to inquire into bona fides of the decree holders while distributing such proceeds—Practice.*—In distributing the proceeds of execution under s 195 of the Civil Procedure Code (Act XIV of 1882), the Court has power to enquire into the *bona fides* of the several decree holders that apply for rateable distribution, if the same has been called in question, and to decide it in the same manner as all other questions that arise in execution The party aggrieved by such a decision is entitled, under the last clause
compel the
to refund.
followed. CHHAGANLAL *v* FAZARALI

[I. L. R., 13 Bom, 154

248. ———— *Purchaser of decree against estate of a deceased person by the legal representative of such deceased person—Right of such purchaser to participate in proceeds realized in execution of decree* —*H K* was the holder of a decree in suit No 157 of 1869 for R69 487 against the firm of *H B & Co.*, and in execution thereof he attached a certain house belonging to the estate of one *H D*, deceased, who had been a partner in that firm *A* (the respondent) was the legal representative of *H D* On the 9th November 1886 *V* purchased the decree from *H K* for R18 000, which sum she obtained for the purpose as a loan from *C P & Co.* As a security for this loan, she gave *C P & Co* a letter, dated the 9th November 1886, whereby she agreed to repay the loan out of the proceeds of the sale of the house which had been attached in execution of the decree which she had purchased. In the meantime another decree, *viz.*, in suit No. 8 of 1870, had

been obtained against the firm of *H B & Co.*, and had been, prior to the 9th November 1886, purchased by the appellant *M*, who had also, prior to the 9th November 1886, applied for execution. On the 6th April 1887 the attached house was sold by the Sheriff, and realized R45,000. On the 5th September 1887 an order was made in Chambers that the Sheriff should divide rateably the moneys in his hands in suit No. 657 of 1869 between *M* and *V*. *M* appealed, and contended that by the transaction between *V* and *H K* the decree in suit No. 657 of 1869 had been extinguished as against the estate of *H D*, and that the said transaction amounted, in law and fact, to a purchase, on behalf of the estate of *H D*, of the properties attached in the said suit or the proceeds thereof. *Held*, confirming the order appealed from, that *V* was entitled to a rateable proportion of the moneys in question. She was only liable under the decree held by the appellant *M* as the representative of *H D*. So far as she might have had property of her own, not derived from *H D*'s estate, available for the purchase of *A K*'s decree, she stood in the same position as a third party who might have purchased *H K*'s share of the proceeds before they were realized. The purchase of *H K*'s share with her own money could not prejudice *M* any more than if an entire stranger had purchased. The fact that she borrowed the money and gave the share as a security to the lender did not affect the question. If the money did not come from *H D*'s estate, it could not matter whether it came directly from *V*'s pocket or from another person at her request. If the money was derived from a source having no connexion, directly or indirectly, with the estate indebted, there is no distinction, in principle, between the representative of the indebted estate and a stranger. MUNMOHANDAS JAIKISONDAS *v.* VIZBAL . I. L. R., 13 Bom., 171

249. ——————— *Effect of vesting order in insolvency.*—A debtor against whom several decrees had been passed filed his petition in the Insolvent Court at Madras, and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent, and had obtained an order for sale in a District Court, and another decree-holder now applied to the same Court in execution of his decrees, for the attachment of other property and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both these applications. *Held* that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code. VIRARAGHAVA *v.* PARASURAMA . . I. L. R., 15 Mad., 372

250. ——————— and s. 276—*Attachment before judgment of fund in hands of third party—Decree afterwards obtained—Assignment by judgment-debtor of fund subsequently to the attachment—Creditors attaching the fund subsequent to the assignment—Fund by consent paid over to Sheriff by third party—Relative claims of assignee of fund and subsequently attaching creditors—Assets realized by sale or otherwise in execution—Misdescription, in order of attachment, of property attached.*—On the 8th July 1890 the plaintiff brought a suit (382 of 1890) against *G* for R2,237, and on 18th July obtained an attachment before judgment of certain money belonging to *G* in the hands of the B., B. and C. I. Railway Company. On the 5th August 1900 *W* got a decree in the suit for R2,008, with interest and costs, and on the 13th August 1890 applied for execution. On the 24th September 1890 *G* made an assignment in favour of his attorneys, Messrs. Wadia and Ghandy, of the fund belonging to him (expressed to be R7,818) in the hands of the Railway Company, subject to the attachment levied on the same by *W*. This assignment was intended to secure costs incurred by Messrs. Wadia and Ghandy as attorneys for the defendant. Notice of this assignment was at once given to the Railway Company. In February 1891 the Bank of Bengal attached the sum of R7,818 in the hands of the Railway Company, in execution of a decree obtained by the Bank against *G* in suit 190 of 1890, and subsequently other creditors of *G*, who had obtained judgment against him, applied for execution and obtained attachments on the sum in question. On the 26th May 1891, under a consent order in suit 382 of 1890, the Railway Company paid over to the Sheriff of Bombay the sum of R8,084-1-0, which was the amount admitted by the Company to be due to *G*, after making all just deductions. It was contended by Messrs. Wadia and Ghandy that, under the above assignment, they were entitled to the fund assigned to them, subject only to the claim of the plaintiff, who had, at the date of assignment, already attached the said fund, and that subsequent attaching creditors had no claim to the said fund. *Held* that the fund in question must be regarded as "assets realized by sale, or otherwise, in execution of a decree" within the meaning of s. 295 of the Civil Procedure Code. *Held* also that, under the provision of s. 295, the claims of the subsequent execution-creditors were "claims enforceable under the attachment of the plaintiff within the meaning of s. 276 of the Civil Procedure Code," and that the assignment to Messrs Wadia and Ghandy was void, as well against the claims of the creditors of *G*, who applied for execution before the 26th May 1891, as against those of the plaintiff to the fund in the hands of the Sheriff of Bombay. *Held* further that the attachment was not limited merely to such portion of the fund as covered the amount of the decree, but was a valid attachment in the form in which it was made, namely, on the whole fund in the hands of the Railway Company. It was argued that the attachment was actually made only on R6,000, and that it did not therefore include the whole fund, which was of larger amount. *Held* that the misdescription in the order of attachment was a mere *falsa demonstratio*, and that the entire sum in the hands of the

ALE IN EXECUTION OF DECREE
—continued

14 DISTRIBUTION OF SALE PROCEEDS
—continued

ailway Company was attached The description of e property must be reasonably accurate, under the rcumstances, and such as with reasonable certainty entifies the property If it is such, it ought to be eld sufficient SORABJI EDULJI WARDEN v GOVIND AMJI . I. L. R., 16 Bom., 91

251. ———— Same judgment ebtor—Sale of lands under attachment—Disposal

on to a District Court The villages were subsequently, by order of the District Court, attached, and

proceeds of sale as he as such receiver, had against he property to be sold Some of the villages were old accordingly and the amount realized paid into the District Court The defendant, who had obtained a eparate decree against the son alone (the father having meanwhile died) in the same District Court, applied for and was granted, a rateable distribution of the moneys realized by the sale of the villages attached and sold as aforesaid, towards satisfaction of his decree. On plaintiff bringing a suit for the recovery of the amount so obtained by defendant from the District Court,—*Held* (1) that the judgment debtor against whom plaintiff and defendant held decrees was the same within the meaning of s 295 of the Code of Civil Procedure, it being immaterial that in plaintiff's suit there had been a co-defendant against whom the decree might have been separately executed, and (2) that the order for sale of the villages under attachment was illegal and invalid in so far as it gave plaintiff the same rights against the proceeds of sale as he had by virtue of the mortgage against the property to be sold GRANT v SUBRAMANIAM
[I. L. R., 22 Mad., 241

252. ———— Proceeds of sale how applicable—Priority of holder of unregistered mortgage to holder of money decree—Transfer of Property Act (IV of 1882), s 97—The plaintiff held a mortgage of certain land belonging to the first

rejected on the ground that M's mortgage was registered and had priority to his mortgage, which was not

was paid into Court, and subsequently returned to defendant No 1 (the mortgagor) The plaintiff now sued for payment of his mortgage debt out of the proceeds of sale or from the defendants The lower Court held that S could not be called upon to refund the money which had been paid to him out of the proceeds, and that the plaintiff had a cause of action only against the mortgagor (defendant No 1) not merely for the balance of R103 8 11, but for the whole of his claim On appeal to the High Court,—*Held* that the claim of the plaintiff in virtue of his mortgage, although unregistered, was prior to that of S under his money decree. The plaintiff's earlier mortgage was postponed to that of M, because it was not registered, but the plaintiff had the right of a

ance that remained subject to the equitable right of the plaintiff PADMANABH BOMBSHENVI v KHEMU KOMAR NAIK I. L. R., 18 Bom., 684

15 WRONGFUL SALES

253. ———— Wrongful attachment in execution—*Attachment under warrant issued by Court*—A party is not liable to damages in respect of an attachment made under a warrant issued by a Court RAJ BULLUB GOPE v. ISSAN CHUNDER HAJRAH . 7 W. R., 355

254. ———— Wrongful attachment—*Liability of decree holder and purchaser to refund*

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the decree-holder and the purchaser for recovery of the elephant or its value, on the ground that the elephant was his property, and not the property of the judgment debtor,—*Held* that the decree holder as well as the purchaser, was liable to make good the loss caused by such sale. KANAI PRASAD BOSE v. HIRACHAND MANU
[5 B. L. R., Ap., 71: 14 W. R., 120

See SUBJAN BIBEE v. SARIUTULLA
[3 B. L. R., A. C., 413: 12 W. R., 329

RAYNOR v SUNGHEER SINGH 5 N. W., 211

255. ———— Goods wrongly sold in execution—*Suit by owner*—A person whose goods are illegally sold under an execution does not lose his

reference to anything which has taken place in the execution-proceedings. SHIBOO NARAIN SINGH v. MUDDEN ALLY. NATABAR NANDI v KALI DASS PALI I. L. R., 7 Calc., 608: 9 C. L. R., 8

SALE IN EXECUTION OF DECREE —*continued.*

15. WRONGFUL SALES—*continued.*

256. ——— **Property of co-sharers wrongly seized and sold**—*Suit to recover shares.*—Where, under colour of buying *A*'s rights and interests sold in execution, the purchaser usurps the shares of *A*'s partners, they need not sue to reverse the sale, but merely to recover their shares, nor are they bound to sue to establish their right as part owners of the land within the time allowed for actions to set aside sales in execution. ATHUROONISSA *v.* RUGHOONATH BANERJEE [W. R., 1864, 322

GUNGA NARAIN BEHUTTA *v.* COLLECTOR OF MIDNAPORE . . . . 6 W. R., 47

257. ——— *Co-sharer, Suit by—Suit for damages for sale against decree-holder.*—The defendant, in execution of a decree against *A*, seized certain moveable property, which was claimed under s. 216, Act VIII of 1859, by *B*. *B* was, on investigation, found to be part owner of the property. *B*'s claim was rejected and the sale took place, the property being made over to the purchaser, and the proceeds handed to the defendant in satisfaction of his decree. The sale proclamation declared that the sale extended only to the right, title, and interest of the debtor *A*, but made no mention of *B*'s claim. In a suit by *B* for damages against the defendant occasioned by the loss of the property of which he was a joint owner,—*Held* the defendant was not liable. TAMIZUDDIN MULLA *v.* NYANUTOLLA SIRKAR [5 B. L. R., Ap., 73 note: 11 W. R., 528

258. ——— **Sale of property of person not party to execution-proceedings**—*Joint decree executed against separate property—Decree against karnavan on tarwad debt before partition—Execution against one of the sharers after partition.*—The karnavan of a Malabar tarwad borrowed money for purposes which rendered the debt binding on the tarwad. The creditor obtained a decree against the karnavan in 1879. In 1882 a partition of the tarwad property took place. In 1891 property which had fallen on partition to the present plaintiff's share was attached and brought to sale in execution of the decree of 1879. He was not joined as a party in the execution-proceedings. *Held*, in a suit to set aside the sale in execution of the decree as invalid, that the sale did not bind the plaintiff. *Sankara* v. *Kelu, I. L. R., 14 Mad.. 29,* referred to. KUNHAPPA NAMBIAR *v.* SHRIDEBI KETTILAMMA I. L. R., 18 Mad., 451

259. ——— **Decree against karnavan of tarwad on tarwad debt before partition** — *Execution against one of the sharers after partition—Joint decree executed against separate property.*—In a suit for declaration that certain land was not liable to be attached in execution of a decree obtained in 1880, it appeared that the decree was passed against the judgment-debtor as karnavan of a Malabar tarwad, and that it was for a debt incurred for purposes binding on the tarwad. In 1882 a partition deed had been come to between the members of the tarwad under which the property in suit had been allotted to the plaintiff. *Held* that the state of things when the debt was contracted must be looked to, and at that time the karnavan was competent to bind all the members of the tarwad. Any subsequent arrangement in the family could not affect their obligation to the creditor who was not a party to it. The plaintiff's property therefore was liable notwithstanding the partition. KISHNAN NAMBIAR *v.* KRISHNAN NAIR . I. L. R., 18 Mad., 452 note

16. INVALID SALES.

(*a*) DEATH OF DECREE-HOLDER BEFORE SALE.

260. ——— **Effect of decree-holder's death on validity of sale**—*Civil Procedure Code, 1877, ss. 365, 366—Order confirming sale.*—A judgment-debtor applied that an execution-sale of property belonging to him should be set aside, as the decree-holder was dead when such sale took place, and such sale was in consequence invalid. This application was disposed of by the Court executing the decree in the presence of the judgment-debtor and the purchaser. The Court held that the fact of such sale having taken place after the decree-holder's death was no ground for setting it aside, and disallowed such application and made an order confirming such sale. *Held per* PEARSON, *J.*, that the application for execution of the decree abated on the death of the decree-holder, not having been prosecuted by his legal representative, and such sale was under the circumstances improper and invalid, and the order confirming it should be set aside. *Per* SPANKIE, *J.*, that such sale was not invalid by reason of the decree-holder's death before it took place. The order confirming it, however, was improper, and should be reversed, and the case should be remanded to be dealt with under the provisions of ss. 365 and 366 of Act X of 1877, as the Court executing the decree should have proceeded under those sections. *Per* OLDFIELD, *J.*, and STRAIGHT, *J.*, that the death of the decree-holder prior to such sale did not render it void. The provisions of ss. 365 and 366 of Act X of 1877 could not be adapted to execution-proceedings. As such sale had been published and conducted according to law, it had properly been confirmed. DULARY *v.* MOHAN SINGH . . I. L. R., 3 All., 759

(*b*) DEATH OF JUDGMENT-DEBTOR BEFORE SALE.

261. ——— **Effect of judgment-debtor's death on validity of sale**—*Sale to mortgagee—Civil Procedure Code, 1882, ss. 234, 368.*—The first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution-proceedings. The second mortgagee then obtained a decree for sale of the property, caused it to be attached, and put up for sale and purchased it himself. The first mortgagee then applied for sale, and the property was put up for sale and purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and

SALE IN EXECUTION OF DECREE
—continued

16. INVALID SALES—continued

the sale took place without his legal representatives being made parties to the execution proceedings *Per* OLDFIELD, *J*, that the sale to the first mortgagee was not void because the judgment debtor had died before it took place, and it took place without his legal representatives being made parties to the execution

cution is proceeding and after sale of his property has been ordered, to imply that the sale is absolutely void if no legal representative has been brought on

Procedure Code since the sale to the second mortgagee

the second mortgagee a party to the proceedings in execution of the former's decree and the latter could not have successfully objected to the sale in execution of that decree, and therefore that sale was not voided by the death of the judgment debtor antecedent to its taking place STOWELL *v* AJUDHIA NATH

[I. L R, 6 All, 255

262. ——— Death of judgment-debtor after attachment, but before sale in execution—*Subsequent sale without legal representative*

sale property which was of the judgment debtor in his lifetime, and which was not at the time of his death under attachment, at the suit of the decree

keep in force an attachment of property made in the judgment-debtor's lifetime. Property under attachment must be considered as in the custody of the law

cation under s 311 of the Code So *held* by the Full Bench (MAHMOOD, *J*, dissenting) Where, subsequently to the attachment of immoveable property in execution of a simple money decree, the judgment debtor died, and the property was then sold without making the legal representatives of the judgment-

SALE IN EXECUTION OF DECREE
—continued

16 INVALID SALES—continued

debtor parties to the sale proceedings —*Held* by the Full Bench (MAHMOOD, *J*, dissenting) that the sale was regular and valid notwithstanding such omission *Ramasami Ayyangar* v *Bhagirathiammal I L R., 6 Mad, 180,* dissented from,—*Held* by MAHMOOD, *J* that on the principle of *audi alteram partem,*

out proof of substantial injury within the meaning of s 311, and that, as in the present case no such substantial injury was either alleged or proved, the sale was valid. SHEO PRASAD *v* HIRA LAL

[I. L R., 12 All, 440

263. ——— Sale without legal repre-

Right of redemption—Absence of substantial injury —*T* obtained a decree against one *S*, and in execution attached certain land which *S* had previ ously mortgaged to *K* On the 11th June 1877 a warrant for sale was issued followed by the usual proclamation *S* died on the 27th September 1877, and a few days afterwards, *viz*, on the 3rd October 1877, the sale took place without any notice being given to *D*, who was the heir and legal representative of *S*, who, however, came to know of it shortly after *T*, the decree holder, purchased the land at the sale and in 1883 sold it to *A* who redeemed the mortgage from *K* and took possession. In 1889 *D*, as heir and legal representative of *S* brought this suit claiming to redeem the mortgage She made *K* (original mortgagee) and *A* (the purchaser) parties to the suit She contended that the sale in execution was bad, having taken place after the death of the judgment debtor and without his legal representative having been placed on the record *Held* that the plaintiff was not entitled to redeem. *Per* JARDINE, *J*—As no "substantial injury" was alleged to have resulted by reason of the plaintiff not having been brought on the record of the execution proceedings immediately on the death of the judgment debtor and before the sale took place, the purchaser acquired a valid title under s. 316 of the Code of Civil Procedure *Per* RANADE, *J*—The omission to join the name of the representative of the deceased judgment-debtor as a party to the record was a material irregularity and a serious defect in the title of the auction purchaser But this irregularity did not vitiate the sale under the special circumstances of the present case, *viz*, that the plaintiff had taken no step to set aside the sale, although she came to know of the sale within a few days after it took place, that there was no fraud or *mala fides* on the part of the judgment creditor, that the sale had not resulted in any substantial injury to the plaintiff; and that the auction purchaser and his assignee had been in

adverse possession for more than twelve years. ABA BIN KHESAJI *v.* DHONDU BAI

[I. L. R., 19 Bom., 276

264. ——— **Omission to bring in representatives of deceased judgment-debtor**—*Civil Procedure Code (1882), s. 341—Irregularity—Absence of a guardian "ad litem" for minor—Adult judgment-debtor described as minor.*—In a mortgage-decree *M* was one of the judgment-debtors, and the guardian *ad litem* of two of the other judgment-debtors, *viz.*, *J*, her minor daughter, and *K*, another person, wrongly described as a minor. After the decree was made absolute, proceedings were taken in execution, but upon payment of a part of the decretal amount the sale was stayed. *M* then died, and, although her heirs were some of the other judgment-debtors, no one was brought on the record as her representative, and no one appointed guardian *ad litem* either for *J* or *K*. Upon a fresh application for sale in which the parties were described as in the decree, the sale was held. An application under s. 311 of the Civil Procedure Code (1882) was then made on behalf of *J* and *K* to set aside the sale. *Held* that the omission to bring in the representatives of the deceased judgment-debtor did not vitiate the sale. *Sheo Prasad* v. *Hira Lal, I. L. R., 12 All., 440 ; Aba* v. *Dhondu Rai, I. L. R., 19 Bom., 276*, referred to. *Krishnayya* v. *Unnessa Begum, I. L. R., 15 Mad., 399*, not followed. *Romeshurry Dasi* v. *Durga Dass Chatterjee, 7 C. L. R., 85*, distinguished. *Held* also that neither the absence of a guardian *ad litem* for *J* nor the description of *K* as a minor affected the validity of the proceedings. *Taqui Jan* v. *Obaidulla, I. L. R., 21 Calc., 866*, referred to. NET LALL SAHOO *v.* KAREEM BUX

[I. L. R., 23 Calc., 686

265. ——— **Death of judgment-debtor after proclamation and before sale**—*Non-joinder of legal representatives—Application to set aside sale—Civil Procedure Code (1882), ss. 234, 311.*—An order for the sale of a debt of R70,000 (previously attached) owing by *H* and *W* to the judgment-debtor was made in execution in two decrees, and on 4th May 1895 a sale proclamation for 20th idem was issued. On the 11th May the judgment-debtor died leaving a will, of which *W* was one of the executors. *W* brought these circumstances to the notice of the Court stating that the executors would proceed to apply for probate and asking for an adjournment of the sale. The adjournment was refused and the sale proceeded, and the decree-holders, who had previously agreed with *H* and *W* to sell the debt to them for the amount of the purchase-money, purchased the debt for R. 0,000, the estate of the judgment-debtor being unrepresented. The Administrator-General, to whom the administration of the estate of the judgment-debtor was afterwards transferred, applied to be brought on to the record and to have the sale set aside. *Held* that the sale was vitiated by the omission to bring the legal representative of the judgment-debtor on to the record, and should be set aside on the application of the Administrator-General, no separate suit being necessary for the purpose. *Sheo Prasad* v. *Hira Lal, I. L. R., 12 All., 440*, dissented from. GROVES *v.* ADMINISTRATOR-GENERAL OF MADRAS

[I. L. R., 22 Mad., 119

266. ——— **Death of judgment-debtor after decree, but before execution**—*Legal representatives not made parties to proceedings—Sale in execution without notice to legal representatives under s. 248 of Civil Procedure Code—Notice given to wrong persons—Title of purchaser—Right of redemption—Limitation—Civil Procedure Code (1877), ss. 234, 248, and 311.*—On the 28th March 1877 *N* mortgaged certain property to the defendant. On the 27th June 1877 one *H* obtained a money-decree against *N*, but before it could be executed, *N* died leaving all his property to his daughters, the plaintiffs. On the 22nd November 1878 *H* applied for execution against *N*, deceased, by his heir and nephew *R*. *R* appeared and stated that he was not the heir, but that the heirs of *N* were his daughters, the plaintiffs. The plaintiffs, however, were not made parties to the execution-proceedings, nor were notices served on them under s. 248 of the Civil Procedure Code (Act X of 1877). The execution-proceedings were continued, and the mortgaged property was sold on the 9th June 1880, and was bought by the defendant (the mortgagee) subject to his mortgage. The sale was confirmed, and a certificate of sale was duly issued to the defendant, who got formal possession on the 11th October 1880, he being already in possession as mortgagee. In 1889 the plaintiffs sued the defendant to redeem the mortgage. It was contended that the defendant, having purchased at a Court-sale, was entitled to the property free from the claim of the plaintiffs. The case first came before FARRAN, *C.J.*, and PARSONS, *J.*, who differed in opinions, FARRAN, *C.J.*, holding that the sale-proceedings were not absolutely null and void by reason of the want of notice of execution to the representatives, but they were valid until set aside by a suit brought for that purpose, which suit had never been brought, and that the plaintiffs had therefore lost their right to redeem, and PARSONS, *J.*, being of opinion that the sale was null and void, and therefore that the plaintiffs were entitled to succeed. The case was then referred to three other Judges of the Court. *Held* by CANDY and JARDINE, *JJ.*, that even assuming that the execution-proceedings and sale had conveyed an absolute title to the purchaser, the present suit, which was brought within twelve years of the sale, did in effect challenge the sale, and that the plaintiffs were therefore entitled to redeem. *Held*, by RANADE, *J.*, that in respect of the plaintiffs who were not parties, the sale-proceedings were invalid and null, and without jurisdiction; that the auction-purchaser acquired no rights under his certificate of sale as against these legal representatives, and that as against them he could only claim title by adverse possession not falling short of twelve years. As the present suit was

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued*

admittedly brought with n that period it was maintainable ERAVA *v* SIDRAMAPPA PASARE [I L R, 21 Bom, 424

Held by the Privy Council on appeal (r versing the decision of the High Court) —An execution sale cannot be treated as a null ty if the Court which sells has jurisdiction to do so and it cannot be set aside as irregular without an issue ra sed for that purpose, and investigation made with the judgment creditor as a party thereto nor under s 311 of the Code of Civil Proced re and art 12 (*a*) of the Limitat on Act 1877 after one year from the date thereof An executive Court does not lose jurisdiction to sell because it serves notice on a person who does not represent the deceased judgment debtor and afterwards errone usly decides that who does Such dec sion is valid unless set aside in due course of law MALKARJUN BIN SHIDRAMAPPA PASARE *v* NARHARI BIN SHIDAPPA L R, 27 I A, 216

(*c*) FRAUD

267 ——— Application of ss 256, 257, Civil Procedure Code, 1859 (1882, ss 311, 312) —*Application to set aside sale* — Ss 256 and 257 Act VIII of 1859 d d not apply to a suit in which fraud is imputed vitiating the sale *in toto* UMBIKA CHURN CHUCKERBUTTY *v* DWARKA NATH GHOSE 8 W R, 506

VIRSINGAPPA BIN BASLINGAPPA *v* SADASHIVAPPA APPA GOLKHANDI 7 Bom, A C, 74

268 ——— Application to set aside
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269 ——— *Civil Procedure Code 1859 ss 256 257—Su t to set aside sale after failure of application* —A plaintiff was not debarred by reason of the failure of an application under ss 256 and 257 Act VIII of 1859 from suing to set aside a sale on the alle at on of fraud in connection with the irregularities first complained of such fraud forming a distinct cause of action NUND LALL DOSS *v* DELAWUR ALI 11 W R, 244

Contra GOBIND SINGH *v* MUNNO RAM DOSS [19 W R, 414

270 ——— Suit to set aside sale—*Sufficiency of proof—Irregularity Proof of want of* In a suit to set aside an execution sale on the ground of fraud it is not suffic ent for a Court to find that the mode of making the attachment and proclamati n was according to law, but it is necessary to consider the surrounding circumstances. CHOONEE SAHOO *v* MUNNOO LALL [14 W R, 325

271 ——— *Civil Procedure Code (1882), s 311—Ground for setting aside sale or otherwise—Effect of fraud to which auction-*

judgment debtor s knowledge subseq ent to the confirmation of the sale ABBUBAKER SAHEB *v* MOHIDIN SAHEB I L R., 20 Mad., 10

272 ——— *Rights of bond fide auction-purchasers* —When no fraud has been alleged a sale in execution cannot be set aside as r gards the auction purchaser whether the order of Court nder which t took place

setting aside the sale. MAHOMED KUZULBASH KHAN *v* MAHOMED SHAH 12 W R, 48

273 ——— *Suit for money secured by the mortgage of immoveable property situate partly in the family domains of the Maharajah of Benares—Fraudulent representation by decree hol ler—Sale of decree enforcing hypothecation of immoveable property* —A suit was instituted in the Court of the Subordi ate Judge of Benares for money secured by the mortgage of immoveable pro-
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above mentioned applied to the Subordinate Judge of Benares for the attachment and sale of *H's* interest in the decree above ment oned falsely representing that the sales in execution of that decree of the 29th August and 4th September 1877 had been set aside Such interest was accordingly put up for sale
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The plaintiffs
dance of the sale
of the 29th May 1878 and the refund of the

purchase-money, on the ground that they were induced to purchase by such false representation, and on the ground that the sale of the interest of *H* in the decree of the 18th November 1874, being of the nature of immoveable property situate within the limits of the family domains of the Maharajah of Benares, could not legally be sold at Benares by the Benares Court. *Held* that such false representation must be held to constitute in law such fraud as vitiated the sale of the 29th May 1878. Also that the Benares Court acted *ultra vires* in selling at Benares an interest in immoveable property situate within the family domains of the Maharajah of Benares. RAGHU NATH DOSS *v.* KAKKAN MAL [I. L. R., 3 All., 568

274. ———— *Communication made to judgment-debtor by intending mortgagee and purchaser to prevent him attending sale.*—Where, in an application to set aside the sale, it was alleged that the auction-purchaser who held a mortgage upon some of the property sold told the judgment-debtor that it was not necessary for him to go to the place where the sale was held, because he, the auction-purchaser, would release the property from the mortgage-lien,—*Held* that the facts, even if proved, would not constitute fraud entitling the judgment-debtor to have the sale set aside. ROJONI KANT BAGCHI *v.* HOSSEIN UDDIN AHMED [4 C. W. N., 538

275. ———— *Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud—Suit by donee to set aside sale for fraud—Rescission when granted.*—In June 1875 *A*, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. *B*, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale the first defendant by means of false representation became the purchaser at an inadequate price. In July 1879 *A* applied to have the sale set aside on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of *B*'s decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiff's claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That gift was made to them by *A* when he was in pecuniary difficulties, and included all *A*'s property. It was therefore void as against his then existing creditors, of whom *B* was one. *B* was therefore entitled to sell the property in execution of his decree. *Held* also that the plaintiffs were not entitled to set aside the sale on the ground of fraud, and that the only remedy, if any, open to them was a suit for damages. The gift by *A* in 1875 was made to his wife as well as to the plaintiffs (his sons), and it gave them the property as tenants-in-common. The plaintiffs were therefore only owners of their respective shares, and were not entitled to have the sale set aside *in toto*. This, however, was what they sued for in their plaint. *A*'s wife could not now join in rescinding the sale, as she must have known in 1879 of the fraud, her husband having immediately after the sale endeavoured to set aside the sale on that ground. A transaction cannot generally be rescinded unless the party seeking it is able to rescind it *in toto*, except where the transaction is severable. HORMUSJI *v.* COWASJI . I. L. R., 13 Bom., 297

(*d*) EXECUTION-PROCEEDINGS STRUCK OFF.

276. ———— Effect on validity of sale—*Beng. Reg. XX of 1795—Title of purchaser.*—Regulation XX of 1795 directed that, when any Court of civil judicature should have occasion to sell lands in execution of a decree, it should transmit a copy thereof to the Board of Revenue, which was with all practicable despatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor. In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the regulation, but no sale was then effected. Afterwards two other futile attempts to sell the lands under the decree were made, and then the decree-holder sold the lands to a third party upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and without any further recourse to the Revenue Board. Previous to such sale, the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the later order, and the total sum was increased by adding the interest which had accrued due between the two orders. *Held* that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit. Nor was it true in any material sense that either the properties to be sold or the sums to be recovered were different; and the principal object of the regulation being the security of public revenues, that object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it. MOHESH NARAIN SINGH *v.* KISHNANUND MISSER [Marsh., 592: 2 Ind. Jur., O. S., 1
9 Moore's I. A., 324
5 W. R., P. C., 7

SALE IN EXECUTION OF DECREE
—continued.

16 INVALID SALES—*continued.*

(e) Decrees afterwards reversed.

277. ——— *Title of pur chaser* —If a sale takes place in execution of a decree in force and valid at the time of sale, the property in the thing sold passes to the purchaser. *Per* Norman, *J* —If the decree or judgment be afterwards reversed, the reversal does not affect the validity of the sale or the title of the purchaser. Chunder Kant Surmah *v* Bissesur Surmah Chuckerbutty . . . 7 W R, 312

Fyazooddeen Bhooya *v* Shumsunnissa Beebee . . 12 W. R, 508

Beharee Lall *v.* Rajah Ram [6 N. W., 291

278. ——— *Reversal of portion of decree relating to costs—Sale in execution for costs* —A sale in execution of a decree for costs is not cancelled when that part of the decree which made the plaintiff answerable for the costs is set aside. Pearee Monee Dossee *v* Collector of Beerbhoom . 8 W. R, 300

279. ——— *Sale made after order for postponement* —*Held* that an auction sale which was made *bonâ fide* under the authority of an order which at the time of the sale was not in force, but had been superseded by a subsequent order postponing the sale, was made without jurisdiction, and was null and void Foujdar Khan *v* Bainee Doobey . . . . 3 Agra, 398

280 ——— *Sale pending appeal—Decree reversed on appeal—Right of judgment-debtor.—S,* having obtained a decree against *M* and another, brought to sale and purchased his property pending appeal The decree having been reversed —*Held* that *M* was entitled to the restoration of his property, and not merely to the proceeds of the sale Sadasivayyar *v* Muttu Sabapathi Chetti I. L R., 5 Mad, 106

See Lati Kooer *v* Sobadra Kooer [I. L. R., 3 Calc, 720: 2 C L. R., 75

Nagindas Devchand *v.* Natha Pitambar [10 Bom, 297

281. ——— *Reversal of decree on appeal before confirmation of sale—Purchaser, Right of* —Plaintiff's title to certain land in dispute was derived from the purchaser at a Court's sale, under a decree which was reversed on appeal subsequently to the sale before it had been confirmed *Held* that the Court which had made the decree ceased, from the moment of the reversal, to have jurisdiction to take any further steps to execute the decree. Though the Court, when it confirmed the sale, was probably not informed that its decree had been reversed, and the purchaser was probably ignorant of it, yet the act of the Court in completing the sale was none the less without jurisdiction, and, being without jurisdiction, could confer no title If a decree be reversed after a sale under it has become absolute, and a certificate has been granted to the purchaser, the title of the purchaser is not affected

chaser ought to ascertain that the decree under which the sale was ordered is still in existence. Basappa *v* Dundaya . I L R., 2 Bom, 540

282. ——— *Sale in execution pending confirmation not competent dure Code, s 312* —Where a sale in execution of a decree has taken place pending an appeal, and the decree has subsequently been reversed, the Court executing the decree cannot, after such reversal, grant confirmation of the sale *Basappa bin Malappa Aki* v *Dundaya bin Shivlingaya I L. R, 2 Bom, 540,* referred to Mul Chand *v* Mukta Prasad . I. L R, 10 All, 83

283 ——— *Remedy of parties aggrieved—Suit for reversal of sale* —When a property is sold in execution of a decree which had been in force at the time of sale, but which was eventually set aside on appeal, the remedy of the party aggrieved is by a suit for the reversal of the sale and not by a suit for the recovery of damages for the loss sustained Annundo Chunder Bannerjee *v* Shubhul Chundra Debea . 2 Hay, 624

284. ——— *Right to re-*

Mookerjee . . W. R., 1864, 129

285 ——— *Suit to recover possession—Return of purchase money* —*A* had sued *R* and others for possession of two mouzahs with t

to the Judge who, after investigation, set aside the *ex parte* decree and revived the suit, holding, after re-trial, that *R* had no interest in the mouzahs in suit, and was not liable to the claim of *A* The latter appealed, and the High Court decided that *R* had been in possession of mouzah J, and was liable for the mesne profits *R* then brought a suit for possession of a share of the mouzah which had been sold in execution. *Held* that the plaintiff could not in justice seek to recover this property from the defendants without offering to pay them the debt which he owed them, and which formed part of the consideration money. Gowree Boyjo Nath Pershad *v* Jodha Singh. . 19 W. R., 416

SALE IN EXECUTION OF DECREE—*continued.*

16. INVALID SALES—*continued.*

purchase-money, on the ground that they were induced to purchase by such false representation, and on the ground that the sale of the interest of *H* in the decree of the 18th November 1874, being of the nature of immoveable property situate within the limits of the family domains of the Maharajah of Benares, could not legally be sold at Benares by the Benares Court. *Held* that such false representation must be held to constitute in law such fraud as vitiated the sale of the 29th May 1878. Also that the Benares Court acted *ultra vires* in selling at Benares an interest in immoveable property situate within the family domains of the Maharajah of Benares. RAGHU NATH DOSS *v.* KAKKAN MAL

[I. L. R., 3 All., 568

274. ——— *Communication made to judgment-debtor by intending mortgagee and purchaser to prevent him attending sale.*—Where, in an application to set aside the sale, it was alleged that the auction-purchaser who held a mortgage upon some of the property sold told the judgment-debtor that it was not necessary for him to go to the place where the sale was held, because he, the auction-purchaser, would release the property from the mortgage-lien,—*Held* that the facts, even if proved, would not constitute fraud entitling the judgment-debtor to have the sale set aside. ROJONI KANT BAGCHI *v.* HOSSEIN UDDIN AHMED

[4 C. W. N., 538

275. ——— *Gift in fraud of creditors—Subsequent sale by creditors in execution of subject-matter of gift—Purchase at execution-sale for inadequate price by means of fraud—Suit by donee to set aside sale for fraud—Rescission when granted.*—In June 1875 *A*, being in pecuniary difficulties, executed a deed of gift of all his property in favour of his wife and minor sons, the plaintiffs. *B*, one of his then existing creditors, subsequently obtained a decree against him, and in execution sold part of the said property. At the sale the first defendant by means of false representation became the purchaser at an inadequate price. In July 1879 *A* applied to have the sale set aside on the ground of the fraud of the first defendant, but his application was rejected. In 1884 the plaintiffs by their next friend sued to set aside the sale, contending that at the date of *B*'s decree the property was theirs by virtue of the deed of gift of June 1875, and further that the sale was void by reason of the defendant's fraud. *Held*, rejecting the plaintiff's claim, that the plaintiffs could not be allowed to set up their deed of gift as against the proceedings in execution under which the defendant acquired his title as purchaser. That gift was made to them by *A* when he was in pecuniary difficulties, and included all *A*'s property. It was therefore void as against his then existing creditors, of whom *B* was one. *B* was therefore entitled to sell the property in execution of his decree. *Held* also that the plaintiffs were not entitled to set aside the sale on the ground of fraud, and that the only remedy, if any, open to them was a suit for damages. The gift by *A* in 18-5 was made to his wife as well as to the plaintiffs (his sons), and it gave them the property as tenants-in-common. The plaintiffs were therefore only owners of their respective shares, and were not entitled to have the sale set aside *in toto*. This, however, was what they sued for in their plaint. *A*'s wife could not now join in rescinding the sale, as she must have known in 1879 of the fraud, her husband having immediately after the sale endeavoured to set aside the sale on that ground. A transaction cannot generally be rescinded unless the party seeking it is able to rescind it *in toto*, except where the transaction is severable. HORMUSJI *v.* COWASJI . I. L. R., 13 Bom., 297

(*d*) EXECUTION-PROCEEDINGS STRUCK OFF.

276. ——— Effect on validity of sale—*Beng. Reg. XX of 1795—Title of purchaser.*—Regulation XX of 1795 directed that, when any Court of civil judicature should have occasion to sell lands in execution of a decree, it should transmit a copy thereof to the Board of Revenue, which was with all practicable despatch to cause the lands to be disposed of at the presidency, or in the district in which the lands were situated, as they might deem most advantageous to the proprietor. In 1843 a copy of a decree was transmitted for execution to the Board of Revenue in compliance with the regulation, but no sale was then effected. Afterwards two other futile attempts to sell the lands under the decree were made, and then the decree-holder sold the lands to a third party upon whose application the decree was executed by the sale of the lands of the judgment-debtor under it by order of the Court, and without any further recourse to the Revenue Board. Previous to such sale, the proceedings had been taken off the file, and the number of villages, owing to some inaccuracy, was differently stated in the later order, and the total sum was increased by adding the interest which had accrued due between the two orders. *Held* that the purchaser at the sale acquired a good title; for it would be contrary to general principles, and a senseless addition to all the vexations of delay in the course of procedure, to hold that when for any reason, satisfactory or not, the execution of a final decree in a suit fails or is set aside, and the proceedings as regards that execution are taken off the file, the whole suit is discontinued thereby, and the further proceedings for the same purpose were to be considered as taken in a new suit. Nor was it true in any material sense that either the properties to be sold or the sums to be recovered were different; and the principal object of the regulation being the security of public revenues, that object had been fully answered by the communication to the Commissioner in 1843, and the proceedings which were taken by him upon it. MOHESH NARAIN SINGH *v.* KISHNANUND MISSER

[Marsh., 592: 2 Ind. Jur., O. S., 1
9 Moore's I. A., 324
5 W. R., P. C., 7

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued*

(e) DECREES AFTERWARDS REVERSED

277 ———— *Title of pur*

NORMAN J—If the decree or judgment be afterwards reversed the reversal does not affect the validity of the sale or the title of the purchaser CHUNDER KANT SURMAH v BISSESUR SURMAH CHUCKERBUTTY 7 W R 312

FYAZOODDEEN BHOOYA v SHUMSUNNISSA BEE BEE 12 W R, 508

BEHAREE LALL v RAJAH RAM [6 N W, 291

278 ———— *Reversal of portion of decree relating to costs—Sale in execution for costs* —A sale in execution of a decree for costs is not cancelled when that part of the decree which made the plaintiff answerable for the costs is set aside PEAREE MONEE DOSSEE v COLLECTOR OF BEERBHOOM 8 W R, 300

279 ———— *Sale made after order for postponement* —*Held* that an auction sale which was made *bonâ fide* under the authority of an order which at the time of the sale was not in force but had been superseded by a subsequent order postponing the sale was made without jurisdiction and was null and void FOUJDAR KHAN v BAINEE DOOBEY 3 Agra, 398

280 ————*Sale pending appeal—Decree reversed on appeal—Right of judgment debtor* —*S* having obtained a decree against *M* and another brought to sale and purchased his property pending appeal The decree having been reversed —*Held* that *M* was entitled to the restoration of his property and not merely to the proceeds of the sale SADASIVAYYAR v MUTTU SABAPATHI CHETTI I. L R 5 Mad 106

See LATI KOOER v SOBADRA KOOER [I. L. R., 3 Calc, 720 2 C L R 75

NAGINDAS DEVCHAND v NATHA PITAMBAR [10 Bom., 297

281. ———— *Reversal of decree on appeal before confirmation of sale—Purchaser Right of*—Plaintiff's title to certain land in dispute was derived from the purchaser at a Court's sale under a decree which was reversed on appeal subsequently to the sale before it had been confirmed *Held* that the Court which had made the decree ceased, from the moment of the reversal, to have jurisdiction to take any further steps to execute the decree Though the Court when it confirmed the sale was probably not informed that its decree had been reversed and the purchaser was probably ignorant of it yet the act of the Court in completing the sale was none the less without jurisdiction and, being without jurisdiction could confer no title If a decree be reversed after a sale under it has become absolute and a certificate has been granted to the

sale is completed Before he applies to the Court to confirm the sale and grant him a certificate the purchaser ought to ascertain that the decree under which the sale was ordered is still in existence BASAPPA v DUNDAYA I L R., 2 Bom, 540

282 ———— *Sale in execution pending appeal from decree—Application for confirmation of sale after reversal of decree—Court not competent to grant confirmation—Civil Procedure Code s 312* —Where a sale in execution of a decree has taken place pending an appeal and the decree has subsequently been reversed the Court executing the decree cannot after such reversal grant confirmation of the sale *Basappa bin Ualappa Akki* v *Dundaya bin Shivlingaya I L R 2 Bom 540* referred to MUL CHAND v MUKTA PRASAD I L R, 10 All, 83

been in force at the time of sale but which was eventually set aside on appeal the remedy of the party aggrieved is by a suit for the reversal of the sale and not by a suit for the recovery of damages for the loss sustained ANNUNDO CHUNDER BANERJEE v SHUBHUL CHUNDRA DEBEA 2 Hay, 624

284. ———— *Right to recover land* —A sale in execution of a decree made while that decree is under review cannot stand if the decree is subsequently reversed The party dispossessed under the decree is entitled to recover the land with mesne profits BHOOLLOO v RAMNARAIN MOOKERJEE W R., 1864, 129

285 ———— *Suit to recover possession—Return of purchase money* —*A* had sued *R* and others for possession of two mouzahs with mesne profits and obtained a joint decree against them in the absence of *R* In execution *A* was about to put up the rights and interest of *R* in mouzah G when *R* applied for a retrial under Act VIII of 1859 s 119 The petition was rejected and the property sold the decree holders becoming purchasers *R* appealed and the High Court remanded the case to the Judge who after investigation set aside the *ex parte* decree and revived the suit holding after retrial that *R* had no interest in the mouzahs in suit and was not liable to the claim of *A* The latter appealed and the High Court decided that *R* had been in possession of mouzah J, and was liable for the mesne profits *R* then brought a suit for possession of a share of the mouzah which had been sold in execution. *Held* that the plaintiff could not in justice seek to recover this property from the defendants without offering to pay them the debt which he owed them and which formed part of the consideration money GOWREE BOYJO NATH PERSHAD v JODHA SINGH. 19 W. R, 416

286. ——— *Suit for possession against auction-purchaser by setting aside sale—Civil Procedure Code (Act X of 1877), s. 244.*—In execution of a decree certain property was sold in pursuance of an order under s. 244 of the Civil Procedure Code, and purchased by a person not a party to the suit, who subsequently obtained possession of the property. That order was subsequently set aside. In a suit by the judgment-debtor to recover possession of the property from the auction-purchaser by setting aside the sale,—*Held* that the order directing the sale had the force of a decree, and that the plaintiff was not entitled to the relief claimed. *Jan Ali v. Jan Ali Chowdhry, 1 B. L. R., A. C., 56 : 10 W. R., 154,* followed. MURARI SINGH *v.* PRYAG SINGH . . . . I. L. R., 11 Calc., 362

287. ——— *Ex-parte decree the validity of which is impeached—Notice to purchasers.*—In a suit by *S* in his own right as well as on behalf of his minor brother, to cancel an execution-sale held in execution of an *ex-parte* decree, to cancel the said decree and two bonds entered into by members of their family during the plaintiff's minority, and to recover possession of a share in the ancestral property which had been sold, it was found that the advances of money for which the bonds were executed were made without proper inquiries as to the necessity for the loan, and that the minors were not properly represented in the suit in which the *ex-parte* decree was obtained. *Held* that the mortgage-bonds under such circumstances were invalid against the plaintiffs, and that it would be carrying presumption too far to say that a decree so obtained must be taken to be valid as against the minors. *Held* that the auction-purchasers could not protect themselves by relying on the decree and execution-sale after having received distinct notice that the mother of the plaintiffs challenged the validity of the whole proceedings. JUNGEE LALL *v.* SHAM LALL MISSER

[20 W. R., 120

Where no such notice has been given, the sale would continue valid. RAM JEWUN LALL *v.* SHAM LALL MISSER . . . . 20 W. R., 123

288. ——— *Effect of reversal of decree upon sale in execution—Sale to bonâ fide purchaser, not a party to the decree, distinguished from sale to decree-holder.*—A sale having duly taken place in execution of a decree in force at the time cannot afterwards be set aside as against a *bonâ fide* purchaser, not a party to the decree, on the ground that, on further proceedings, the decree has been, subsequently to the sale, reversed by an Appellate Court. A suit was brought by a judgment-debtor to set aside sales of his property in execution of the decree against him in force at the time of the sales, but afterwards so modified, as the result of an appeal to Her Majesty in Council, that, as it finally stood, it would have been satisfied without the sales in question having taken place. He sued both those who were purchasers at some of the sales, being also holders of the decree to satisfy which the sales took place, and those who were *bonâ fide* purchasers at other sales, under the same decree, who were no parties to it. *Held* that, as against the latter purchasers, whose position was different from that of the decree-holding purchasers, the suit must be dismissed. ZAIN-UL-ABDIN KHAN *v.* MUHAMMAD ASGHAR ALI KHAN

[I. L. R., 10 All., 166
L. R., 15 I. A., 12

289. ——— *Civil Procedure Code (1882), ss. 108, 244, and 314—Sale in execution of an ex-parte decree and purchase by the decree-holder—Confirmation of the sale—Subsequent setting aside of the ex-parte decree—Application by a subsequent purchaser in execution of another decree to set aside the sale on the ground that the ex-parte decree had been set aside.*—Certain immoveable properties were sold in execution of an *ex-parte* decree and were purchased by the decree-holder himself. After the confirmation of the sale, the decree was set aside under s. 108 of the Civil Procedure Code at the instance of some of the defendants in the original suit. On an application under s. 244 of the Civil Procedure Code having been made by a prior purchaser of the said properties in execution of another decree, to set aside the sale held in execution of the *ex-parte* decree, the defence was that the application could not come under s. 244 of the Civil Procedure Code, and that the sale could not be set aside, as it had been confirmed. *Held* that the case was one under s. 244 of the Civil Procedure Code; and that the *ex-parte* decree having been set aside, the sale could not stand, inasmuch as the decree-holder himself was the purchaser. *Doyamoyi Dasi v. Sarat Chunder Mozoomdar, I. L. R., 25 Calc., 175; Beni Persad Koeri* v. *Lakhi Rai, 3 C. W. N., 6; Durga Charan Mandal* v. *Kali Prasanno Sarkar, I. L. R., 26 Calc., 727; Nawab Zainal-ub-din Khan* v. *Mahammed Asghar Ali, L. R., 15 I. A., 12 : I. L. R., 10 All., 166;* and *Mina Kumari Bibee* v. *Jagat Sattani Bibee, I. L. R., 10 Calc., 220,* referred to. SET UMEDMAL *v.* SRINATH ROY

[I. L. R., 27 Calc., 810
4 C. W. N., 692

(*f*) DECREE FOUND TO HAVE BEEN SATISFIED.

290. ——— *Purchase by one of several judgment-debtors—Full Bench ruling.*—Where a decree was purchased by one of the judgment-debtors and afterwards executed and property of the other judgment-debtor sold in execution of the decree, and it was eventually held by a Full Bench in the case that the purchase of the decree by one of the debtors was a satisfaction of the decree,—*Held*, in a suit against the execution-purchaser to have the sale declared invalid, that the sale must be set aside. DIGAMBUREE DEBIA *v.* ESHAN CHUNDER SEIN

[15 W. R., 372

291. ——— *Order for sale and sale in execution under a decree previously satisfied.*—An order for sale and a sale under such

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued*

order are *ultra vires* and nullities if the decree which is ordered to be executed has been satisfied by payment into Court of the decretal money before the order is made CHUNNI *v.* LALA RAM [I. L. R., 16 All., 5

292. ———— *Sale in execution of decree already satisfied—Bond fide purchaser at such sale—Right of such purchaser*—Where a person, a stranger to the proceedings purchases property *bonâ fide* at an auction sale held in execution of a decree, the sale to him cannot be set aside on the ground that the decree had already been satisfied out of the Court at the time the sale was held *Rewa Mahton* v. *Ram Kishen, I L R, 14 Calc, 18 L R., 13 I A, 106*, and *Mothura Mohun Ghose* v *Akhoy Kumar Mitter, I L R, 15 Calc, 557*, followed. YELLAPPA *v.* RAMCHANDRA [I L R, 21 Bom., 463

293 ———— *Mortgage decree, Sale in execution of—Purchase by a third*

is not entitled to redeem the property which was purchased by a third party at a sale held in execution of an *ex-parte* mortgage decree and confirmed whilst the *ex parte* decree was still in force, though the said decree was set aside and subsequently re affirmed after trial MUKHODA DASSI *v.* GOPAL CHUNDER DUTTA . . I L R., 26 Calc, 734

MUKHODA DASI *v.* HEM CHUNDER BHATTACHARJEE . . 3 C W. N, 766

See ZAINULABDIN KHAN *v.* MUHAMMAD ASHGAR ALI KHAN [I. L R, 10 All., 166: L R., 15 I. A., 12

294. ———— *Civil Procedure Code, 1877, s 246—Execution of cross-decrees—Power of Court executing decree—Bond fide purchaser—Presumption of validity of order for sale*—If a Court ordering a sale in execution of a decree has jurisdiction, a purchaser of the property sold is not bound to inquire into the correctness of the order for execution any more than into the correctness of the judgment upon which the execution issues Notwithstanding anything in s 246 of the Code of Civil Procedure, he is not bound to inquire whether the judgment debtor holds a cross-decree of higher amount against the decree holder any more than he is to inquire, in an ordinary case, whether the decree, under which execution has issued, has been satisfied or not. These are questions to be determined by the Court issuing execution Where property sold in execution of a valid decree, under the order of a competent Court, was purchased *bond fide* and for fair value, *Held* that the mere existence of a cross decree for a higher amount in favour of the judgment debtor, without any question of fraud, would not support a suit by the latter against the purchaser to set aside the sale REWA MAHTON *v.* RAM KISHEN SINGH [I L R, 14 Calc, 18 L R, 13 I. A., 106

295 ———— *Title of auction purchaser—Purchaser whether bound to enquire into the validity of the order under which the sale takes place*—Where under a decree upon a mortgage the sale of certain property is ordered, and such property is sold at auction in pursuance of such order, and the sale is confirmed, the auction purchaser takes a good title, even though the decree was one which the Court ought not to have made The purchaser at a sale under a decree is under no obligation to look behind the decree to see whether the decree has been rightly made *Matadin Kasodhan* v *Kazim Husain, I. L R, 13 All, 432*, distinguished *Rewa Mahton* v *Ram Kishen Singh, I L R 14 Calc, 18*, and *Mukhoda Dassi* v *Gopal Chunder Dutta, I L R, 26 Calc, 734*, referred to KAUNSILLA *v* CHANDAR SEN . I. L R., 22 All, 377

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ment—Execution of decree adjusted, but of which satisfaction has not been entered, Effect of, on rights of innocent purchaser—Adjustment of decree without certifying—In 1881 *R* obtained a decree against *M* for possession of certain property with costs Subsequently a compromise of the questions at issue in the suit was come to between *R* and *M*, one of the terms of which was that *P* gave up his

the execution proceedings had been taken without notice to him, and had been fraudulently taken by the defendants in collusion with one another in order to deprive him of his share in the tank It was found that *A's* purchase was an innocent one and untainted with fraud. *Held*, upon the authority of

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to execute the decree, but as the decree remained an unsatisfied decree so far as the Court was concerned, and capable of being executed, the compromise not having been certified to the Court, the Court had jurisdiction to execute it *Pat Dasi* v *Sharfin*

bound to see that the application was made *bond fide*

on his behalf. MOTHURA MOHUN GHOSE MONDUL *v.* AKHOY KUMAR MITTER **I. L. R., 15 Calc., 557**

(*g*) DECREES AGAINST WRONG PERSONS.

297. ——— *Right to have sale set aside where decree was against wrong person as representatives—Subsequent claim by proper representative—Estoppel—Quiescence.*—One *S* died indebted to the second defendant, *M.* On his death his widow, *T*, became his heir, as he left neither son nor brother surviving. In 1878 *M* brought a suit to enforce payment of the debt due by the deceased *S*, and he made *B*, the mother of *S*, defendant in the suit, omitting *T* altogether. On 30th August 1878 *M* obtained an *ex-parte* decree, and on the 26th July 1880 the house of *S*, then in the possession of *B*, was sold in execution, and the first defendant, *R*, purchased it. On 6th September 1880 the sale was confirmed, and on 26th November 1880 *R* was put into possession. On the 10th of December 1880 one *S* presented a petition on behalf, as he alleged, of the plaintiff *T*, the widow of *S*, to set aside the sale. He did not produce any authority from her, and his application was rejected on the 14th June 1881. On the 31st October 1878 *T* adopted the plaintiff *B* under an authority, as she alleged, of her deceased husband *S*. In 1881 *T* filed the present suit on behalf of her adopted son, *B*, to set aside the sale and to recover the house. *Held* that the plaintiff was entitled to have the sale set aside and to recover possession of the house. The estate was vested in *T* as legal representative of her deceased husband. Had *T* wilfully put forward *B* as the representative of *S* so as to deceive and mislead *M*, then, no doubt, she might be held bound by the decree obtained by the latter against *B*. Her mere quiescence while *M* wilfully sued the wrong person could not affect her legal rights, or deprive her adopted son, the plaintiff *B*, of his rights. He could not be bound by a suit and sale to which he was not a party either in person or by representation. BASWANTAPA SHIDAPA *v.* RANU **[I. L. R., 9 Bom., 86**

(*h*) DECREE WITHOUT POWER OF SALE.

298. ——— *Sale under decree giving no power of sale—Partition of tarwad—Tarwad debt—Construction of decree—Decree explained by judgment.*—In 1870 the managers of the plaintiff's tarwad demised certain land now in suit on kanom. In 1885 they sued to redeem the kanom, and a decree was passed that the plaintiff do pay a certain sum to the kanomdar, and that he do surrender the land; but in the judgment it was said that the kanom amount should be charged on the land. In 1886 the tarwad was divided, and the land above referred to was allotted to the present plaintiff's branch. In 1887 the kanomdar in execution of the above decree, brought the land to sale, and it was purchased by defendant 1. *Held* that the sale was not binding on the plaintiff. SANKARA *v.* KILU **[I. L. R., 14 Mad., 29**

(*i*) DECREE AMENDED AFTER EXECUTION.

299. ——— *Civil Procedure Code (Act XIV of 1882), s. 206—Amendment of decree after execution.*—In a suit for money against the karnavan and two anandravans of a Malabar tarwad, the judgment directed a "decree for the plaintiff as prayed," but the decree ordered payment by one anandravan only. Land belonging to the tarwad was attached and sold in execution, an objection by the other members of the tarwad having been overruled. After the sale, the decree was amended and brought into conformity with the judgment. In a suit brought by other members of the tarwad against the karnavan, the decree-holder and the execution-purchaser, it was found that the judgment-debt had been contracted for proper tarwad purposes, and that the land had been sold for its proper value. *Held* that the sale was binding on the plaintiffs. PYDEL *v.* CHATHAPPAN **[I. L. R., 14 Mad., 150**

See CHATHAPPAN *v.* PYDEL **[I. L. R., 15 Mad., 403**

(*j*) WANT OF SALEABLE INTEREST.

300. ——— **Civil Procedure Code, 1877, s. 313**—*Purchase knowing judgment-debtor has no interest.*—A person who purchases immoveable property at a sale in execution of a decree, knowing that the judgment-debtor has no saleable interest therein, is not entitled to the benefit of the provisions of s. 313 of Act X of 1877, which were designed for the protection of persons who innocently and ignorantly purchased valueless property. MAHABIR PRASHAD *v.* DHUMAN DAS **[I. L. R., 3 All., 527**

301. ——— **Civil Procedure Code, 1882, s. 313**—*Setting aside sale—" Saleable interest."*—The fact that property sold in execution of a decree is subject to a mortgage upon which a decree has been obtained, which fact is not disclosed prior to the proclamation of sale, is not sufficient to enable an auction-purchaser to set aside the sale on the ground that the judgment-debtor had "no saleable interest" in the property within the meaning of s. 313 of the Civil Procedure Code. *Naharmul Marwari* v. *Sadut Ali, 8 C. L. R., 468*, distinguished. PROTAP CHUNDER CHUCKERBUTTY *v.* PANIOTY **[I. L. R., 9 Calc., 506 : 12 C. L. R., 488**

302. ——— *Application to set aside sale—" Saleable interest."*—A misrepresentation or concealment in the sale notification which induces a purchaser to buy a property for much more than it is really worth (although that misrepresentation or concealment may be fraudulent), is no ground for setting aside a sale under s. 313 of the Civil Procedure Code. The meaning of s. 313 is, that when a purchaser under an execution sale buys a property which turns out to have no

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued*

existence at all, or to be of no saleable value whatever, the Court may then set aside the sale under s 313 DURGA SUNDARI DEVI *v* GOVINDA CHUNDRA ADDY . I L R, 10 Calc, 368

303 ——————— *Decree against insolvent—Official Assignee—Purchaser at execution sale—Setting aside sale* —Where, in execution of a decree passed against a person who had pre
viou ortions of
his Assignee)
are ntitled to
hav the Code
of C he Official
Assignee acquiesces in the sale, and is content to receive the sale proceeds DINOBUNDHOO PAL *v* SHOSHEE MOHUN PAL I. L. R, 9 Calc, 217

S C DENOBUNDHOO PAL *v* SHUSHI MOHUN PAL CHOWDHRY 12 C L R., 60

S C RAM SOONDUR DEY *v* SHOSHI MOHUN PAL CHOWDHRY . 11 C L R, 389

304 ——————— *Property covered by mortgage—Saleable interest* —In execut on of a rent decree dated 22nd May 1879 certa n immoveable property was sold in execution and purchased by the appellant on the 21st February 1880 no mention having been made of any incumbrances On the 9th May 1879 a decree was obtained upon a mortgage executed by the original judgment debtor and in execution of that decree the property which had already been sold was attached and on the 11th March again sold in execution of the second decree, it being alleged that the property was covered by the mortgage which was prior in date to the former decree The appellant thereupon applied that the sale of the 21st March should be set as de under s 313 of the Civil Procedure C de, and h s pur
to him *Held*
vas covered by
rcumstances no
it-debtor at the
1880 as would
prevent the operation of s 313 of the Civil Procedure Code inasmuch as under that sale the purchaser wo ild be unable to get the particular property purchased by him and that the sale must be set aside NAHARMUL MARWARI *v* SADUT ALI

[8 C L R., 468

305 ——————— *Sale under attachment during subsistence of prior attachment—Saleable interest* —In executi n of a decree obtained
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Decem-
ber was fixed for the sale Meanwhile, on the 13th December 1877, a decree had been obta ned by another party against the judgment debtor and in execution of this decree the same property was attached on the 13th September 1878 and under this attachment a sale took place on the 15th November
as fixed,
the st attach-
men ale on the
6th January 1879, applied under s 313 of the Civil Procedure Code to set aside the sale on the ground that the judgment debtor had no saleable interest *Held* (reversing the decision of the lower Court) on the authority of the following cases *Gogaram v Kartick Chunder Singh, B L R, Sup Vol, 1022 9 W R 514 Lalla Joogul Lall v. Bhukha Chowdhry 9 W R, 244* and *Kartick Chunder Singh v Gogaram, 2 W R Mis 48* which the Court felt bound to follow, while it doubted their correctness —that the sale must be set aside CHUTKA PANDA *v* GOBURDHONE DASS 6 C L R, 85

306 ——————— *Debtor having no saleable interest in portion of property* —S 313 of the Civil Procedure Code only applies to cases in which the judgment debtor has no saleable interest in the property sold It does not apply to cases where the judgment debtor has no saleable interest in a portion only of the property IN THE MATTER OF THE PETITION OF RAM COOMAR DEY RAM COOMAR DEY *v* SHUSHEE BHOOSHUN GHOSE

[I L. R, 9 Calc, 626

307 ——————— *Judgment debtor —Representative—Sale of immoveable property—Setting aside sale* —In the event of the death of the judgment debtor notice must issue to his representative before the sale of immoveable property can be set aside under s 313 of the Code of Civil Procedure albeit that the section makes no express provision for the appeara ce of the representative BALA KADAR *v* GULAM MOHIDIN

[I. L R, 7 Bom, 424

308 ——————— *Civil Procedure Code ss 213, 220—Transfer of execution of decree to Collector—Jurisdiction of Civil Courts to entertain application under s 313—Rules prescribed by Local Government under s 320—Notification*
ugust —Held
he Civil Pro
ale in execu-
red for execu
tion to the Collector in accordance with the rules prescribed by the Local Government was entertainable by the Civil Courts and the Collector had no jurisdiction under the Code or under Notification No. 671 of 1880 to entertain it *Madhu Prasad v Hansa Kuar, I L R 5 All, 314*, referred to NATHU MAL *v* LACHMI NARAIN

[I L. R., 9 All., 43

See KESHADDEO *v* RADHE PRASAD

[I. L. R, 11 All, 94

309 ——————— *Civil Procedure Code s 313 Setting aside sale in execution of decree —Incumbrance* —The fact that property sold in execution of a decree is incumbered, even when the

SALE IN EXECUTION OF DECREE
—*continued.*

16. INVALID SALES—*continued.*

incumbrance covers the probable value of the property, is not sufficient to sustain a plea that the person whose property is sold had no saleable interest therein. S. 313 of the Civil Procedure Code contemplates that either the judgment-debtor had no interest at all, or that the interest was not one he could sell, and the fact that the property may fetch little or nothing if sold does not affect the question. *Naharmal v. Sreat Ali, 8 C. L. R., 368,* distinguished. *Protap Chunder Chuckerbutty v. Paniotu, I. L. R., 9 Calc., 566,* referred to. SANT LAL v. RAMJI DAS . . I. L. R., 9 All., 167

(*k*) SALE CONTRARY TO LAW.

310. — *Sale in contravention of the provision of the Transfer of Property Act (IV of 1882), s. 99 Sale by mortgagee in execution of decree.*—Property subject to a mortgage having been sold by the mortgagee as holder of a decree against the mortgagors, a separate suit was brought by the mortgagors to set aside the sale as being in contravention of s. 99 of the Transfer of Property Act. *Held* that, although the sale was contrary to the provisions of s. 99 of the Transfer of Property Act, that section being for the benefit only of a particular class of persons, namely, those concerned with a right to redeem mortgaged property, such a sale was not void, but voidable MAYAN PATHUTI v. PAKURAN . . . I. L. R., 22 Mad., 347

See MARTAND BALKRISHNA BHAT v. DHONDO DAMODAR KULKARNI . I. L. R., 22 Bom., 624

and ERUSAPPA MUDALIAR v. COMMERCIAL AND LAND MORTGAGE BANK . I. L. R., 23 Mad., 377

311. — *Sale contrary to provisions of Transfer of Property Act (IV of 1882), s. 99—Mortgage of annuity—Sale of attached property at instance of mortgagee—Right of son not party to suit to redeem his share—Rights of Hindu debtor's son after attachment and sale.*—In 1848 an annuity had been settled on plaintiff's ancestor and his heirs in consideration of his withdrawal from a suit for partition then pending. In 1878 plaintiff's father and others then enjoying the annuity executed a bond for money due by them, mortgaging their rights under the said annuity. Instalments due under the bond having fallen into arrears, a suit was brought in 1889 in respect of them, and a decree obtained, which contained a provision that the right to the annuity should be liable to be proceeded against for the amount so due. Plaintiff was born in 1891. In 1893 an application was made for the issue of a proclamation of sale, and a sale ensued and a certificate was given to the purchaser, who was the decree-holder. Plaintiff having instituted this suit to set aside the said sale or to have it declared that it did not affect his right under the said annuity,—*Held* that, inasmuch as the decree was, on its true construction, not a decree for sale, the case was one of attached property being sold at the instance of the mortgagee in execution of a money-decree, and so within the prohibition of s. 99 of the Transfer of Property Act. The conditions under which a sale of mortgaged property is permissible under that section are not satisfied unless there is a decree for sale; and in the absence of such decree, the sale is prohibited; that although a sale in contravention of the section is not absolutely void for all purposes, it is at least void against all persons who were not parties to the suit in which the decree for money was obtained; that the rights of a Hindu debtor's son may be concluded by a proper mortgage decree and sale thereunder, or, if there is no mortgage, by a decree for money and sale of the attached property, but they are not affected by a sale brought about in defiance of s. 99; that the suit was not barred by s. 244 of the Code of Civil Procedure; and that plaintiff was entitled to a decree for the redemption of his share MUTHURAMAN CHETTI v. ETTAPPASAMI . . I. L. R., 22 Mad., 372

(*l*) WANT OF JURISDICTION.

312. — **Effect on validity of sale**—*Property attached in execution of decrees of Munsif and District Judge—Sale of property under order of Munsif—Civil Procedure Code, 1882, s. 285.*—Where certain immoveable property, which had been attached in execution of two decrees, one made by a Munsif and the other by the District Court to which such Munsif was subordinate, was sold under the order of the Munsif,—*Held*, following *Badri Prasad v. Sarua Lal, I. L. R., 4 All., 359,* that the sale was bad, by reason of the Munsif's want of jurisdiction to order it. AGHORE NATH v. SHAMA SUNDARI [I. L. R., 5 All., 615

313. — *Civil Procedure Code, 1877, s. 285 - Attachment of property in execution of decree of two Courts—Postponement of sale by Court of higher grade—Sale of property under order of Court of lower grade.* - When several decrees of different Courts are out against a judgment-debtor, and his immoveable property has been attached in pursuance of them, the Court of the highest grade where such Courts are of different grades, or the Court which first effectuated the attachment where such Courts are of the same grade, is, under s. 285 of the Civil Procedure Code, the Court which has the power of deciding objections to the attachment, of determining claims made to the property, of ordering the sale thereof and receiving the sale-proceeds, and of providing for their distribution under s. 295. *Held* therefore where the immoveable property of a judgment-debtor was attached in execution of several decrees, one a Munsif's decree and the rest a Subordinate Judge's decrees, and the Subordinate Judge postponed the sale of such property, but the Munsif refused to do so, and such property was sold in execution of the Munsif's decree, that the sale was void as having been made in pursuance of the order of a Court which had no jurisdiction to direct it. IN

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued.*

THE MATTER OF THE PETITION OF BADRI PRASAD. BADRI PRASAD *v.* SARAN LAL [I. L. R., 4 All., 359

tion of s 285 of the Code of Civil Procedure is not affected by the fact that prior to the attachment

47, referred to BALKISHEN *v* NARAIN DAS [I. L. R., 18 All., 348

315 ———————— *Civil Procedure*

under s 285 HAR BHAGAT DAS MARWARI *v.* ANANDARAM MARWARI 2 C. W. N., 126

316. ———————— *Civil Procedure Code, 1877 (1882, s 285)—Attachment and sale in execution of decrees of several Courts*—Certain immoveable property was attached in execution of a decree made by a Subordinate Judge and also in exe-

confirm such sale, but, inasmuch as the Subordinate

no reason to interfere CHUNNI LAL *v* DEBI PRASAD [I. L. R., 3 All., 356

317. ———————— *Civil Procedure Code, 1882, s 285—Immoveable property—Attachment by superior Court—Sale by inferior Court—Title of purchaser.*—The provisions of s 285 of the

Code of Ci

property

issued by a

of s 285 of the Code of Civil Procedure, 1882 MUTTUKARUPPAN CHETTI *v* MUTTURAMALINGA CHETTI I. L. R., 7 Mad., 47

318. ———————— *Jurisdiction of Munsif—Bengal Civil Courts Act (VI of 1871), s 18*

similarly been assigned), had attached the same

tional Munsif had no jurisdiction to attach or sell it, and that the attachment by *C* was made improperly and without jurisdiction *Quære*—Whether s 285 of the Civil Procedure Code applies to immoveable property OBHOY CHURN COONDOO *v* GOLAM ALI *alias* NOCOURY MEAH [I. L. R., 7 Calc., 410: 9 C. L. R., 361

319. ———————— *Civil Procedure*

purchaser being unaware of any objection to the exercise of a jurisdiction which the Court would ordinarily be competent to exercise), *A* purchased certain property and this sale was confirmed It appeared subsequently that this same property had two years previously to the sale been attached by a superior Court On a sale of this property being advertised by the superior Court, *A* objected on the ground that he had already purchased it; this objection was overruled, and sale was held by the superior Court, at which *A* again became the purchaser *A* then brought a suit against the decree holder and the judgment-debtor in the inferior Court to recover as damages the sum paid by him at the sale The suit was dismissed. *Held* that, although the superior

SALE IN EXECUTION OF DECREE—continued.

16. INVALID SALES—*continued.*

Court had been wrong in insisting on the second sale and in not requiring the amount received by the inferior Court to be deposited in the superior Court, and then rateably distributed amongst the creditors of the judgment-debtors, yet the sale by the inferior Court was a good and valid sale; and *A*'s suit was therefore rightly dismissed. *Obhoy Churn Coondoo* v. *Golam Ali, I. L. R., 7 Calc., 410*, adopted. BYKANT NATH SHAHA v. RAJENDRO NARAIN RAI [I. L. R., 12 Calc., 333

320. ———— *Sale under two different decrees of different Courts of different grades—Civil Procedure Code, 1882, s. 285.*—The first mortgagee of certain immoveable property obtained a decree for the sale of the property, caused the property to be attached, and then ceased to prosecute the execution proceedings. The second mortgagee then obtained a decree for the sale of the property, caused it to be attached and put up for sale, and purchased it himself. The first mortgagee then applied for the sale of the property, and the property was put up for sale and was purchased by him. After the order for this sale was made, and before it took place, the judgment-debtor died, and the sale took place without his legal representatives being made parties to the execution proceedings. The Courts which executed these decrees were of two different grades, the Court which executed the first mortgagee's decree being of the lower grade. In a suit by the first mortgagee against the second mortgagee for possession of the property,—*Held* that the sale to the first mortgagee was not invalid, with reference to the provisions of s. 285 of the Civil Procedure Code, because it had not been ordered and held by the Court of the higher grade, inasmuch as, when such sale was ordered by the Court of the lower grade, the property was not under attachment in execution of the decree of the Court of the higher grade, that decree having been executed by the sale of the property, and therefore the provisions of that section were not applicable. *Badri Prasad* v. *Saran Lal, I. L. R., 4 All., 359*, distinguished. *Per* OLDFIELD, *J.*, that there was nothing in the provisions of s. 285 or 295 of the Civil Procedure Code to support the contention that the first mortgagee, after allowing the property to be sold, was debarred from enforcing execution of his decree against it, and was only entitled to look to the assets realized at the sale for the satisfaction of his decree. STOWELL v. AJUDHIA NATH [I. L. R., 6 All., 255

321. ———— *Sale under decree by two Courts, first a Revenue Court, and then a Civil Court—N.-W. P. Rent Act (XII of 1881), ss. 170, 171, 172—Civil Procedure Code, 1882, s. 285—Effect of section in conflict between Civil and Revenue Courts.*—*Held* that the procedure prescribed by s. 285 of the Code of Civil Procedure, although it might be applicable as between Courts of Revenue of different grades, could not be applied where the conflict was between a Court of Revenue and a Civil Court. Hence where the same property had been attached both by a Court of Revenue and by a Civil Court, but was first brought to sale by the Court of Revenue, it was *held* that the purchaser at the sale held in execution of the decree of the Court of Revenue took a good title as against the purchaser at the sale held in execution of the decree of the Civil Court. *Onkar Singh* v. *Bhup Singh, I. L. R., 16 All., 196*; *Aulia Bibi* v. *Abu Jafar, I. L. R., 21 All., 405*; and *Madho Prakash Singh* v. *Murli Manohar, I. L. R., 5 All., 406*, referred to. RAGHUBAR DAYAL v. BANKE LAL . I. L. R., 22 All., 182

322. ———— *Attachment of immoveable property in execution of decrees of two Courts of same grade—Sale by one Court pending prior attachment by other Court—Validity of sale—Title of purchaser—Civil Procedure Code (Act XIV of 1882), s. 285.*—*X* on the 3rd November 1884 obtained a decree in the Court of the Second Munsif of Bagirhat against *A*, and on the 6th August 1887 sold such decree to the plaintiff, who on the 8th August 1887 applied in that Court for execution, and on the 5th September 1887 attached the share of *A* in a certain jumma. The share was subsequently sold in execution of the plaintiff's decree on the 20th October 1887 and purchased by the plaintiff himself. *Y*, having obtained another decree against *A* in the Court of the First Munsif of Bagirhat on the 6th May 1875, sold his decree in the month of January or February 1887 to the defendant, who on the 10th February 1887 commenced execution proceedings in the First Munsif's Court against *A*, and on the 16th July applied for attachment of *A*'s share in the jumma. *A* filed an objection which was disallowed, and the share was attached at the defendant's instance on the 28th July 1887, and the attachment was confirmed on appeal on the 26th November 1887. The plaintiff, on the strength of his purchase of the 20th October 1887, put in a claim in the month of April 1888 in the defendant's execution proceedings in the Court of the First Munsif, which was, however, disallowed. He then filed a suit to set aside the order disallowing his claim, and for a declaration that the right, title, and interest of *A* passed to him under the sale of the 20th October 1887. *Held* that, though the property had been first attached in the Court of the First Munsif, that Court was not a Court of a higher grade than that of the Second Munsif within the meaning of s. 285 of the Code of Civil Procedure, and that the sale to the plaintiff was valid, and that he was entitled to the decree he prayed for. *Bykant Nath Shaha* v. *Rajendro Narain Rai, I. L. R., 12 All., 339*, followed; *Badri Prasad* v. *Saran Lal, I. L. R., 4 All., 359*; *Aghore Nath* v. *Shama Sundary, I. L. R., 5 All., 615*, dissented from; and *Muttukaruppan Chetti* v. *Mutturamalinga Chetti, I. L. R., 7 Mad., 47*, referred to. DWARKA NATH DASS v. BANKU BEHARI BOSE . . I. L. R., 19 Calc., 651

323. ———— *Civil Procedure Code (1882), ss. 285 and 295—Concurrent decrees—Distribution of assets among several decree-holders—Sale in execution by inferior Court of property while under an attachment issued by superior Court*—On the 9th October 1891 *A* obtained a decree

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

against *B* in the Court of the First Class Subordinate Judge of Surat On the 13th October 1891 *C* also obtained a decree against *B* in the Court of the Second Class Subordinate Judge at Surat and imme- diatel ... on the 16th October 1891, applied for

extraordinary jurisdiction *Held* that the sale was good NARANJI MORARJI *v* HARIDAS NAVALRAM

[I. L. R., 18 Bom, 458

324.—————— *Civil Procedure Code (1882), s.* *in two Courts—* *sif's Court—Sm* Western Provinc the purposes of s.

poses of s 285 of the Code of Civil Procedure BALLU RAM *v* RAGHUBAR DIAL

[I. L. R., 16 All., 11

325.—————— *Attachment and proclamation of sale in execution of decree of Small Cause Court—Subsequent application for*

execution he attached a debt due to *M* and a proclamation of sale was duly issued Before the sale took

however, under the Small Cause Court decree were continued, and the debt was sold in execution and was

SALE IN EXECUTION OF DECREE —*continued.*

16 INVALID SALES—*continued.*

the Small Cause Court is inferior in grade to the Court of the First Class Subordinate Judge TUBMUKLAL HARKISANRAI *v* KALYANDAS KHUSHAL

[I. L. R., 19 Bom, 127

326 —————— *Decrees of different Courts against same judgment-debtor—Leave given by both Courts to judgment-debtor to raise amount by private sale—Civil Procedure Code (1882), s 305—Confirmation of such sale by one Court—Subsequent application for confirmation to other Court.*—*P* obtained a decree against *V* in the Court of the second class Subordinate Judge at Saundatti He applied (darkhast of 1893) for execution, but *V* on the 19th April 1893 obtained permission under s 305 of the Civil Procedure Code (Act XIV of 1882), to raise the amount of the decree by

Belgaum Court however, *V* also obtained a certificate under s 305 of the Civil Procedure Code, on 22nd April 1893, authorizing a private sale Relying on these two certificates, *V* sold the lands under attachment to the applicant *A* for R2,000 by deed dated 25th May 1893 On the 28th June 1893 *A* applied to the First Class Subordinate Judge in Belgaum, under s 305 of the Civil Procedure Code, for confirmation of the sale, and that the purchase-money paid by him should be distributed as follows, *viz*, R518 14-2 in satisfaction of the decree of the ... ion of the ... he balance, ... e Court of ... irected that ... e paid into ... July 18 3 ... confirm the sale already confirmed by the Belgaum Court, and he brought into Court the said sum of R128-7 10 On the 19th June 1893, while the above proceedings were going on, a third decree holder (the

the objection and refused confirmation of the sale. The applicant then applied to the High Court under

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

its extraordinary jurisdiction. *Held* that the Judge of the Belgaum Court had concurrent jurisdiction to sell and confirm the sale notwithstanding the execution and leave to sell by the Saundatti Court. The application to the Saundatti Court by *A* was therefore superfluous and ought to have been rejected, inasmuch as the sale had already been confirmed by a competent Court (*viz*, the Court of Belgaum), and nothing further remained to be done in regard to it. ANDANAPA *v.* BHIMRAO ANNAJI

[I. L. R., 19 Bom., 539

327. ———————— *Attachment of same property by different Courts—Sale by both Courts—Titles of the respective purchasers at such sales—Civil Procedure Code (Act XIV of 1882), s. 285.*—*A* and *B* obtained decrees against *C*. *A*'s decree was obtained in the Court of the Subordinate Judge at Surat. *B*'s decree was obtained in the Small Cause Court at Surat. In execution of their respective decrees, both *A* and *B* obtained orders of attachment on the same day of a certain debt due to *C* by the Municipality of Surat. Notice of the attachment was given by the Subordinate Judge to the Small Cause Court, under s. 285 of the Civil Procedure Code (Act XIV of 1882). On the 16th November 1893 the Subordinate Judge issued an order for sale of the attached debt, and on the 18th December the Small Cause Court issued a similar order. Both Courts sold the debt on the 6th January 1894, the Small Cause Court selling first in point of time. At the sale by the Subordinate Judge the plaintiff bought the debt and the defendant was the purchaser at the sale by the Small Cause Court. The defendant, after his purchase, sued the Municipality for the debt, making the plaintiff a party defendant, and he obtained a decree against the Municipality. The plaintiff also sued the Municipality, making the defendant a party, and he also obtained a decree which was confirmed by the District Court. Against this decree the defendant appealed to the High Court. *Held* that the plaintiff had the better title. The defendant had bought at the sale held by the Small Cause Court. The sale by that Court after it had received notice of the attachment proceedings in the Court of the Subordinate Judge was in direct contravention of the provisions of s. 285 of the Civil Procedure Code (Act XIV of 1882). The Small Cause Court had full notice of the proceedings in the Subordinate Judge's Court, and there was no reason to suppose that the defendant himself had not similar knowledge. The defendant did not set up the plea that he was a *bonâ fide* purchaser without notice. *Per* FARRAN, *C.J.*—The sale by the Small Cause Court was an act done in the irregular exercise of admitted jurisdiction. But when property is attached by more Courts than one, although each has jurisdiction to sell, that jurisdiction should be exercised by the Court of the highest grade (s. 285). If by a mistake of law, or in ignorance of an earlier attachment in a Court of a higher grade, a Court of lower grade proceeds to sell, it is not deprived of jurisdiction to do so by s. 285. The jurisdiction of a Court cannot depend upon its knowledge of facts. If an attachment in a higher Court deprives a Court of lower grade of jurisdiction to sell, the sale must be, I apprehend, invalid, whether the Court of lower grade knows of it or not. If the sale is held to be in such cases only irregular, the purchaser will take an indefeasible or defeasible title according to whether he knows or does not know of the irregularity. If he buys *bonâ fide* and without notice, his title would be perfect, and he will not be affected by the irregularity of the proceedings in the sale. *Rewa Mahton* v *Ram Kishen, L. R., 13 I. A., 111.* If he purchases with notice, he runs the risk of his purchase being set aside. ABDUL KARIM *v.* THOKORDAS TRIBHOBAN DAS

[I. L. R., 22 Bom., 88

328. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 15, 285—Sale in execution by inferior Court of property already under an attachment by a superior Court—Jurisdiction of Munsif—Preferential right of purchasers in execution-sale—Concurrent decrees, Execution of.* —*A* obtained a decree against *B* in the Court of the Munsif of Jamui, and in execution thereof attached *B*'s property on the 16th March 1891; the property was sold on the 20th April 1891 and purchased by *C*, who obtained possession of it on the 3rd of August 1891, and then sold his interest to the plaintiff. At the same time the defendant *R* had a decree for costs against *B* and his heirs in the Court of the Subordinate Judge of Monghyr, and in execution thereof attached the same property on the 4th February 1891, and sold it on the 24th August 1891, *i.e.*, about four months after the sale of the property by the Munsif. The plaintiff sued for possession on the ground that, having purchased the property of *B* before the second sale by the Subordinate Judge, she was entitled to the property. The defendant contended that the sale by the Munsif of the property under attachment by a Court of a higher grade was absolutely void, and the Munsif had no jurisdiction to sell the property under s. 285 of the Civil Procedure Code. *Held* that the sale by the Munsif was not without jurisdiction, and that it conveyed to the plaintiff a valid title to the property. S. 285 of the Civil Procedure Code is merely a section for procedure to prevent different claims arising out of the attachment and sale of the same property by different Courts. *Bykant Nath Shaha* v. *Rajendra Narain Rai, I. L. R., 12 Calc., 333; Dwarka Nath Das* v. *Banku Behari Bose, I. L. R., 19 Calc., 651;* and *Patel Naranji Morarji* v. *Haridas Navalran, I. L. R., 18 Bom., 458,* referred to. RAM NARAIN SINGH *v.* MINA KOERY

[I. L. R., 25 Calc., 46

329. ———————— *Civil Procedure Code (1882) s. 285—Attachment of same property by different Courts—Sale by both Courts—Titles of the respective purchasers.* — Where property not in the custody of any Court has been attached in execution of decrees of more Courts than one, s. 285 of the Code of Civil Procedure does not take away

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued*

the jurisdiction of the inferior Court, and any proceedings by such inferior Court in contravention of that section will be vitiated only where there has been notice of the proceedings in the superior Court KUNHAYAN v ITHUKUTTI

[I L R., 22 Mad , 295

330 ——— *Mortgage decree for sale of properties in different districts and jurisdictions Civil Procedure Code (Act XIV of 1882), ss 19, 223 (c), sch IV, form 128* —A decree obtained in a suit brought under the provisions of s 19 of the Code of Civil Procedure, in the Court of the Subordinate Judge of Rajshahye on a mortgage of certain properties situated in the districts and jurisdictions of Rajshahye and Nyadumka directed

given by s 19 of the Code included an authority to make the order for the sale of the properties and that the Rajshahye Court was within its jurisdiction in directing and carrying out the sale *Quære*—Whether, where a sale takes place under a money-decree of property partly within the local limits of the Court whose decree is being executed and partly without that Court's jurisdiction, the sale of the property without the jurisdiction would be valid and binding in consequence of the provisions of ss. 19 and 223 of the Code of Civil Procedure MASEYK v STEEL & Co I. L R., 14 Calc , 661

331. ——— *Property outside jurisdiction of Court executing decree—Code of Civil Procedure (Act XIV of 1882), ss 16, 233 649* —A Court has no jurisdiction in execution of a decree to sell property over which it has no territorial jurisdiction at the time it passed the order of sale The decree-holder at a sale under a mortgage-decree purchased the mortgaged property with leave of the Court. Before the order of sale was passed the mortgaged property had been transferred by an order of Government to the jurisdiction of another Court. *Held* by the Full Bench that the sale must be set aside as being without jurisdiction *Kamini Soondari Chowdhrani* v *Kali Prosonno Ghose, L R 12 I A 215 I L R, 12 Calc 225,* followed. PREM CHAND DEY v MOKHODA DEBI

[I L R., 17 Calc , 699

See DAKHINA CHURN CHATTOPADHYA v BILASH CHUNDER ROY I. L R , 18 Calc , 526

332 ——— *Bengal, N W P, and Assam Civil Courts Act (XII of 1887), s 13 cl 3—Civil Procedure Code (1882), s 25—Transfer of civil case* —A suit on a mortgage bond praying for the decree for sale was transferred under s. 25 of the Civil Procedure Code from the Court of the Second Subordinate Judge to that of the Third Subordinate Judge in the district for trial in that Court The suit was decreed and an order for sale was passed by the Third Subordinate Judge After the sale, an application was made to set it aside on the ground, *inter alia* that the Court of the Third Subordinate Judge had no jurisdiction to sell the property, it being within the local jurisdiction of the Second Subordinate Judge's Court.

order for sale had jurisdiction to hold the sale *Prem Chand Day* v *Mokhoda Debi I L R, 17 Calc, 699* distinguished. *Gopi Mohan Roy* v *Doybaki Nundun Sen, I L R 19 Calc, 3* and *Tincowrie Debya* v *Shib Chandra Pal Choudhury, I L R, 21 Calc 639* referred to JAJEERNATH SAHAI v DIP RANI KOER I. L R., 22 Calc , 871

TINCOURI DEBYA v SHIB CHANDRA PAL CHOWDHURY I L R., 21 Calc , 639

333 ——— *Decree set aside as made without jurisdiction* —When on a re hearing a Deputy Collector set aside his former judgment as passed without jurisdiction it was held that his proceedings under that judgment were of themselves null and void and that it did not require any order in words to set aside the sale which they involved ONUNGO MOONJUREE DOSSIA v PUNCHANAN BOSE 12 W R., 72

A, in a certain property was sold and purchased by *B* The decree was after the sale set aside as having been passed without jurisdiction In a suit by *A* against *B* for confirmation of possession, on the ground that *B* was about to take possession of the property under the purchase —*Held* that the sale in execution was a nullity, as the decree had been passed without jurisdiction *Jan Ali* v *Jan Ali Choudhry 1 B L R, A C 66 10 W R 154,* and *Peareemonee Dossee* v *Collector of Beerbhoom, 8 W R, 300* distinguished JADU NATH KUNDU CHOWDRY v BRAJA NATH KUNDU

[6 B L R., Ap , 90

335 ——— *Sale by Sheriff ultra vires—Right of purchaser* Where the Sheriff sells under a *fi fa* property which could not legally be sold,—*e g*, an equity of redemption,—*Held* the sale was null and void, and the purchaser took nothing by his purchase When therefore the purchaser was also a mortgagee who was in right of his purchase put into possession —*Held* that, notwithstanding his possession the right of redemption still existed and he must be taken to have been in possession as mortgagee only HURRO PERSHAD GHOSAL v HURRO MONEE DEBEE 8 W R , 210

336 ——— *Sale of ancestral land by order of the Court—Act V of 1877*

SALE IN EXECUTION OF DECREE —*continued.*

16. INVALID SALES—*continued.*

(Civil Procedure Code), ss. 311, 320—Rules prescribed by Local Government under s. 320—Invalidity of sale.—A Subordinate Judge made an order for the sale in execution of a decree of certain immoveable property, which was "ancestral" within the meaning of the notification by the Local Government, No. 671, dated the 30th August 1880, under which execution of such decree should have been transferred to the Collector; and such property was sold accordingly. *Held* that the order for the sale of such property having been made without jurisdiction, the sale was void and should be set aside. SUKHDEO RAI *v.* SHEO GHULAM . I. L. R., 4 All., 382

337. ——— *Fieri facias, Writ of—Sheriff, Jurisdiction of.*—Inasmuch as since the establishment of the High Court, or at all events since 1865, a writ of *fieri facias* could not run beyond the High Court's original jurisdiction, a sale in execution of a decree by the mofussil Court of property in the mofussil will pass a good title to the purchaser, notwithstanding that, at the time of such sale, the Sheriff was in possession of the property under a writ of *fieri facias* issued subsequently to 1865. *Monomothonath Dey* v. *Greender Chunder Ghose, 24 W. R., 366,* cited. GRISH CHUNDER DAS *v.* BROJO JIBUN BOSE . . . 8 C. L. R., 4

338. ——— *Sale set aside as being without jurisdiction—Title of purchaser—Certificate of sale.*—In 1862 a suit was filed on the Equity Side of the Supreme Court for partition of the property of a Hindu family, and an injunction was issued prohibiting *V*, a party to the suit, from interfering with the property. In 1863 a decree was passed for the administration of the property under the direction of the High Court, and the injunction against *V* was continued, and on July 7th, 1866, part of the property, a house at Chingleput, was sold by the master and bought by the plaintiff's predecessor in title. In 1865 *V* and his son (the second defendant), who was no party to the suit, mortgaged the house at Chingleput to the first defendant, who remained in possession from that date. *Held* in a suit brought on July 6th, 1878, to recover the property, that, as the High Court had no jurisdiction before the Letters Patent of 1865 in suits for immoveable property partly within and partly without the town of Madras, the sale of the house at Chingleput in 1866 by the Court was *ultra vires,* and the plaintiff acquired no title thereby. SADAGOPA EDINTARA MAHA DESIKA SWAMIAR *v.* JAMUNA BHAI AMMAL [I. L. R., 5 Mad., 54

This decision was afterwards reversed on review so far as it decided that the High Court prior to 1865 had no power to execute a decree in a partition suit between Hindu inhabitants of Madras by selling immoveable property situated in Chingleput district. JAMUNA BHAI AMMAL *v.* SADAGOPA EDINTARA MAHA DESIKA SWAMIAR . I. L. R., 7 Mad., 56

339. ——— *Suit to recover property sold in execution by Court not having jurisdiction—Civil Procedure Code, 1859, s. 257.*—A suit to recover property alleged to have been sold in execution by a Court which had no jurisdiction was not barred by Act VIII of 1859, s. 257. KANHAYE SINGH *v.* OOMADHUR BHUTT . 21 W. R., 291

340. ——— *Sale of property for purpose of realizing Court-fees erroneously supposed to be due to Government—Ultra vires—Want of jurisdiction.*—An order for sale and a sale under such order are *ultra vires* and nullities when in fact there was no jurisdiction in the Court to make the order. *Ram Lall Moitra* v. *Bama Sundari Dabia, I. L. R., 12 Calc., 307,* referred to. BALWANT RAO *v.* MUHAMMAD HUSAIN [I. L. R., 15 All., 324

(*m*) DECREES BARRED BY LIMITATION.

341. ——— **Suit to recover purchased property**—*Right of suit.*—A suit to recover possession of, and to establish the right to, property purchased in execution of a decree declared after the sale to be null and void as being barred by limitation at the time of execution, will not lie. PARADUTT LALL *v.* RUTTUN SINGH . . . 5 N. W., 242

See ZUMEER SIRDAR *v.* ASSEEMODDEEN SIRDAR [23 W. R., 257

342. ——— **Objection to validity of sale**—*Civil Procedure Code, s. 230—Decree, Execution of, after twelve years.*—After a sale of land in execution of a decree and before its confirmation, the judgment-debtor cannot object to the validity of the sale on the ground that the execution of the decree is barred by the provisions of s. 230 of the Code of Civil Procedure, 1877. GANGATHARA PANDITHAR *v.* RATHABAI AMMAL . I. L. R., 6 Mad., 237

343. ——— **"Subsisting decree," Meaning of**—*Sale certificate, Effect of—Act XIV of 1882, ss. 244, 316—Costs.*—The words "subsisting decree," in the proviso to s. 316 of the Code of Civil Procedure, refer to a decree which is unreversed and in full force, and not merely to a decree the execution of which is not barred by limitation. Where a decree under which a sale takes place remains unreversed, and the sale under it has been confirmed, a sale certificate will operate as a valid transfer of the property sold, notwithstanding that the sale has actually taken place at a time when execution of the decree is barred by limitation. SARODA CHURN CHUCKERBUTTY *v.* MAHOMED ISUF MEAH . I. L. R., 11 Calc., 376

344. ——— **Effect on validity of sale**—*Execution of decree barred at time of sale—Purchase of decree-holder.*—*G A* obtained a decree against *M*. Afterwards *L N*, who had obtained a decree against *G A*, attached the decree which he (*G A*) had obtained against *M*, and, upon sale in execution, became himself the purchaser of that decree. It afterwards appeared that the decree held by *L N* against *G A* was barred by limitation. *Held* that the execution of *L N*'s decree against *G A*, being

SALE IN EXECUTION OF DECREE —*continued*

16 INVALID SALES—*continued*

barred by lapse of time at the time of sale, the sale was invalid GOLAM ASGAR v LAKHIMANI DEBI [5 B. L. R., 68 : 13 W. R., 273

345. ———— Separate suit for declaration that decree was barred by limitation at time of sale—*Right of suit.*—A sued for possession of certain lands to which he alleged he was entitled as wussee (executor) under a wusseeutnamah (will), and which *B* had fraudulently, during the minority of himself and his brother, caused to be put up for sale under a decree the execution of which was barred by lapse of time *B* had become the purchaser at such sale *Held* that a suit would not lie for the purpose of having it determined that the execution of *B's* decree was barred. NOJABUT ALI CHOWDRY v. MOHA BUSSEEROOLAH CHOWDHRY [11 B. L R , 42: 20 W. R , 5

346. ———— Suit to recover property sold—*Sale set aside, execution of decree being found to be barred by limitation—Suit to recover the property from purchaser* —A creditor obtained a decree against his debtor, and applied for and obtained an order for execution This application was unsuccessfully opposed by the judgment debtor on the ground that execution was barred by limitation. Certain properties of the judgment debtor were attached and sold in execution of this decree, the judgment creditor himself becoming the purchaser In due course the sale was confirmed, and a certificate

by regular suit *Jan Ali v. Jan Ali Chowdhry, 1 B. L R , A C , 56 10 W. R., 154,* distinguished MINA KUMARI BIBEE v. JAGAT SATTANI BIBEE [I L. R., 10 Calc., 220

347. ————Right to deposit by judgment debtor in execution-proceedings after execution of decree is barred—*Limitation—Money of moveable property deposited in Court to stay sale—Order for sale confirmed—No execution taken out within the three years after deposit* —

Court in such a case as the above, the Court, upon confirmation of the order for a sale, holds the deposit in trust for the decree holder, and is at liberty to realize it and pay the proceeds over to him to the extent of his decree SHEO GHOLAM SAHOO v RAHUT HOSSEIN . . I. L. R , 4 Calc., 6

S C. SHEO GHOLAM SAHU v KHUB LALL [2 C. L. R., 206

348. ———— Order setting aside sale after confirmation—*Certificate and confirmation of sale—Pos- ...ocedure Code 1879—Limit- 165* —A person purchased certain property at a sale in execution of a decree in November 1878, his purchase was confirmed, and he obtained a certificate of sale on the 23rd May 1879, from which date he remained in possession The judgment debtor applied to have the sale set aside for irregularity, but his application was dismissed both at the hearing and on appeal He

from its confirmation, the judgment-debtor, on a summary application, obtained an order setting aside the sale and putting the auction purchaser out of ... erroneous, the ... after the sale ... the sale by a summary order The words "subsisting decree," in s 316 of Act X of 1877, as amended by Act XII of 1879, mean a decree unreversed and in full force, and not merely one upon which execution cannot be issued. IN THE MATTER OF THE PETITION OF MAHOMED HOSSEIN v. KOKIL SINGH [I. L R., 7 Calc , 91: 9 C. L R , 53

(n) SALE PENDING APPEAL.

349. ———— Sale of property released from attachment pending appeal from decree declaring property liable—*Civil Procedure Code, 1877, ss 280, 283, and 545* —S 283 of the Code of Civil Procedure, 1877, does not constitute an exception to the procedure laid down by s. 545 When property has been released from attachment under s. 280 and subsequently declared liable to attachment by a decree against which an appeal is pending, a sale of such property before the final result of the appeal is not illegal by virtue of the provisions of s 283 FATHULA v MUNIYAPPA [I. L. R., 6 Mad., 98

350 ———— Decree setting aside sale—Second sale pending appeal to which decree-holder not made party—*Confirmation of first sale in appeal—Purchasers of the same property in execution of decree, Priority between—Laches of appellant in not obtaining stay of execution.*—

SALE IN EXECUTION OF DECREE
—*continued.*

16. INVALID SALES—*concluded.*

A sale in execution of a mortgage-decree was set aside and the auction-purchaser appealed to the High Court without making the decree-holder a party to the appeal The decree-holder applied for a fresh sale, and at a second sale held pending the appeal purchased the property and obtained possession. On appeal to the High Court the first sale was upheld, and an order passed confirming the sale In a suit by the decree-holder purchaser at the second sale,—*Held* that the effect of plaintiff's not being made a party to the appeal is practically the same as if he had not been a party to the suit. *Held also that* the plaintiff was not a party to the subsequent proceedings and could not be said to have bid at the sale with the effect of those proceedings hanging over his head. *Jan Ali* v. *Jan Ali Chowdhry, 1 B. L. R., A.C., 56 ; 10 W. R., 154,* referred to. *Held* that the defendant could have applied to the High Court for a stay of execution, and if the execution had been stayed, the present litigation would not have arisen. GONESH PERSHAD *v.* FAZUL AMAM KHAN

[I. L. R., 23 Calc., 857

17. SETTING ASIDE SALE.

(*a*) GENERAL CASES.

351. ——— **Right of judgment-debtor to set aside sale on deposit of the amount of debt**—*Civil Procedure Code (1882), s. 301 A (a)—Poundage money—Costs.*—A judgment-debtor, whose land had been sold in execution, is entitled to have the sale set aside under the Civil Procedure Code, s. 310 A (*a*), if he deposits 5 per cent. of the purchase-money, including that deducted by the Court for poundage, and fulfils the requirements of cl. (*b*), even though something more on account of the poundage was recoverable from him under the head of costs. MUTHU AYYAR *v.* RAMASAMI SASTAIAL

[I. L. R., 20 Mad., 158

352. ——— **Setting aside sale by deposit of the debt due to the decree-holder at whose instance the property is sold**—*Code of Civil Procedure (Act XIV of 1882), ss. 295, 310A—Application for rateable distribution.*—When property has been sold in execution of a decree and there are other decree-holders who, prior to the sale, have applied under s. 295, Civil Procedure Code, for rateable distribution, the person whose property has been sold is competent to have the sale set aside under s. 310A by depositing only the amount of the decree, for the satisfaction of which the sale was proclaimed and took place. HARI SUNDARI DASYA *v.* SHASHI BALA DASYA **1 C. W. N., 195**

S. 295 does not apply to a deposit made under s. 310A by the judgment-debtor. BIHARI LAL PAL *v.* GOPAL LAL SEAL . . . **1 C. W. N., 695**

353. ——— **Sale under mortgage-decree**—*Sale in execution of a money-decree, Effect of, before the sale in execution of mortgage-decree confirmed — Code of Civil Procedure (1882), ss. 310A, 311, and 312—Effect of sale not being set aside either under s. 310A or 311 of the Code.*—A certain property was sold on the 16th August 1895 in execution of a mortgage decree, dated the 9th December 1892, and was purchased by *A*. In the meantime an eight-anna share of the said property was sold in execution of a money-decree and was purchased by *R* on the 22nd May 1893. On the 10th September 1895 the judgment-debtor applied to set aside the mortgage-sale under s. 311 of the Code of Civil Procedure, and on the 14th September 1895 a similar application was made by *R*. On the 28th March 1896 both these applications came on for hearing before the Subordinate Judge, who passed no order; and on the same date *R* presented a petition asking the Court to set aside the sale held in execution of the mortgage-decree, upon payment by him of the mortgage-money, with interest and costs, and also to declare that he might be entitled to redeem the property. On the 30th March 1895 the Subordinate Judge allowed the petition and ordered the sale to be set aside upon the aforesaid terms. *Held* that, inasmuch as under s. 312 of the Code of Civil Procedure *A* was entitled to have an order confirming the sale of the 16th August 1895, unless the sale were set aside under s. 310A or s. 311 of the Code of Civil Procedure, and as the sale was not set aside under either of those sections, the Court below had no jurisdiction to set aside the sale upon payment by the applicant of the mortgage-money with interest and costs. *Birj Mohun Thakur* v. *Uma Nath Chowdhry, I. L. R., 20 Calc., 8,* referred to. KHETTER NATH BISWAS *v.* FAIZUDDIN ALI

[I. L. R., 24 Calc., 682

354. ——— **Amount payable incorrectly calculated by an officer of the Court**—*Civil Procedure Code (Act XIV of 1882), s. 310A—Civil Procedure Code Amendment Act (V of 1894).*—The judgment-debtor within thirty days from the date of sale deposited in Court, under s. 310A of the Code of Civil Procedure, the amount calculated in the office of the Munsif as payable under the section. The Munsif set aside the sale. On appeal to the High Court by the auction-purchaser on the ground that the amount deposited by the judgment-debtor was not in compliance with s. 310A, and that before the sale could be set aside it was necessary for the judgment-debtor to pay, in addition to what he deposited, a sum equal to 5 per cent. of the purchase-money,—*Held* that, when the amount payable by the judgment-debtor under s. 310A of the Code of Civil Procedure has been calculated by an officer of the Court and has been deposited, an order setting aside the sale must be made by the Court as a matter of right; the Munsif therefore was justified in setting aside the sale. *Ugrah Lall* v. *Radha Pershad Singh, I. L. R., 18 Calc., 255,* referred to. MAKBOOL AHMED CHOWDHRY *v.* BAZLE SABAN CHOWDHRY **I. L. R., 25 Calc., 609**

See ABDOOL LATIF MOONSHI *v.* JADUB CHANDRA MITTER . . . **I. L. R., 25 Calc., 216**

SALE IN EXECUTION OF DECREE — *continued*

17 SETTING ASIDE SALE—*continued*

355 ——————— *Civil Procedure Code (1882), s 310A—Civil Procedure Code Amendment Act (V of 1894)—Power of a Court to set aside a sale if the deposit provided for in s 310A be not paid within thirty days* —*Held* (by the Full Bench) —Where the judgment deb or has not within thirty days from the date of sale deposited in Court a sum equal to 5 per cent of the purchase money and the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, less any amount which may, since the date of such proclamat on of sale have been received by the decree holder, but has deposited in Court within the prescribed period a sum calculated by some officer of the Court as the sum to be deposited in respect of such 5 per cent and of the sum specified in such proclamation of sale, and there is nothing to show that there was any mistake of the Court by which the judgment debtor was induced to deposit an insufficient amount, the sale ought not to be set aside *Makbool Ahmed Chowdhry* v *Bade Sathan Chowdhry, I L. R, 25 Calc, 609*, distinguished CHUNDI CHARAN MANDAL v BANKE BEHARY LAL MANDAL I L R., 26 Calc, 449 [3 C W N, 283

356 ——————Application to set aside sale of mortgaged property—*Civil Procedure Code (1882) s 310A—Execution of decrees—Transfer of Property Act (IV of 1882), s 85* —S 310A of the Code of Civil Procedure applies where a sale of immoveable property has taken place under a mortgage decree so as to enable the owner of such property who duly complies with its provisions to have such sale set aside Where the owner of immoveable property applies under that section to have a sale of property set aside, he is under a liability to deposit a sum equal to 5 per cent on the purchase-money, for payment to the purchaser, even where the land has been purchased by the decree holder TIRUMAL RAO v DASTAGHIRI MIYAH [I L R., 22 Mad., 288

357 —————— Actual receipt of sale-proceeds by decree holder necessary to set aside a sale—*Civil Procedure Code (1882), s 310A, as amended by Act V of 1894* —The words in cl (*b*) of s 310A of the Code of Civil Procedure as amended by Act V of 1894—"less any amount which may, since the date of such proclamation of sale, have been received by the decree holder"—contemplate an actual receipt of the amount by the decree holder A mere payment of the sale proceeds into Court does not satisfy the requirements of the section A proclamation of sale ordered that for the recovery of R843 9-9 certain immoveable property belonging to the judgment-debtor should be sold in two lots, A and B Lot A was sold for R1..0 and on the next day lot B was sold for R584 The judgment debtor afterwards paid into Court R152-13 0, and applied to have the sale of lot B set aside, alleging that he had purchased lot A through a third party, and that the sale-proceeds had been paid into Court *Held* that the mere payment of the sale proceeds into Court was not a sufficient compliance with the requirements of s 310A of the Code of Civil Procedure, and as it had not been shown that the sale proceeds had been received by the decree holder, the sale could not be set aside TRIMBAK NARAYAN v RAMCHANDRA NARSINGRAO [I L R, 23 Bom, 723

358 —————Property sold in lots—*Civil Procedure Code (Act XIV of 1882), s 310A —Deposit—Deposit sufficient to cause sale of one lot* —When at a sale in execution of a decree the properties attached were sold separately in nine lots and the judgment-debtor prayed to have the sale of one of the properties set aside under s 310A, Civil Procedure

holder for some of the properties and the amounts deposited by the other purchasers —*Held* that s 310A did not apply to this case and that there was no deposit within the terms of that section KRIPA NATH PAL v. RAM LAKSHMI DASYA [1 C W. N, 703

311, 312 588—*Zur i peshgi lease Thica right and zur i peshgi money Attachment of—Bengal Tenancy Act (VIII of 1885) ss 162 163—Sale of the defaulting tenure—Sale of the zur i peshgi claim whether valid* *A* advanced some money to *B* upon a zur i peshgi of certain property and sub let the same property to *B*, on a certain rent reserved subsequently *A* brought a suit for the rent so reserved, and a decree upon a compromise entered into between the parties was awarded in favour of *A* for realization of a sum of money *A* applied for execution and attached and proclaimed for sale not only the thica right held by *B* under him (*A*), but also the zur-i peshgi claim which *B* had against him, and the property was sold and purchased by *A*, the decree holder himself, an application for setting aside the sale was made by the judgment debtor *B* to the Court which sold the property, upon the ground that the sale proceedings were vitiated by fraud on the part of the decree holder in the conduct of the sale The Subordinate Judge found that there was fraud and set aside the sale as bad in law On appeal this order was confirmed by the District Judge, who, however, expressed no opinion on the question of fraud On second appeal it was contended that the sale could not be set aside under s 312 unless it was found that there was fraud *Held* that, if the application of the judgment debtor be regarded as one under s 311 of the Code of Civil Procedure, it would be necessary to come to some conclusion or other upon the question of fraud and unless it is found that the fraud came to the knowledge of the judgment debtor within thirty days before the date of his application, the sale could not be set aside under s 312 of the Code. That having regard to the provisions of ss 162 and 163 of the

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

Bengal Tenancy Act, nothing but the tenure in default could have been sold, and that the sale of the claim which the judgment-debtor had against the decree-holder was altogether bad. LUCHMIPAT *v.* MANDIL KOER . . . . **3 C. W. N., 333**

360. ———— **Ground for setting aside sale**—*Civil Procedure Code, 1859, ss. 256, 257—Suit to cancel order setting aside sale—Act XXIII of 1861, s. 11.*—A Munsif having cancelled an auction-sale of landed property on the sole objection of the judgment-debtor that the property realized a low price, and the Judge having dismissed the auction-purchaser's appeal from the said order on the ground that the Munsif had no authority to cancel the sale under the terms of s. 257 of Act VIII of 1859 without some irregularity in conducting or publishing the sale being proved, and that the said order must therefore be taken to have been passed under s. 11, Act XXIII of 1861, which admits of no appeal by the auction-purchaser, who was no party to the execution-proceedings,—*Held* that such order passed by the Munsif was not a proceeding under s. 11 of Act XXIII of 1861, but an order passed *ultra vires* under s. 257 of Act VIII of 1859, and that a suit would lie for its cancelment—the finality of an order under ss. 256 and 257 of Act VIII of 1859 depending on its compliance with the terms of those sections. SUKHAI *v.* DARYAI . . **I. L. R., 1 All., 374**

361. ———————— *Civil Procedure Code, 1882, ss. 311, 312, 313, 644—Act XII of 1879, sch. IV, form 149—Suit to set aside sale.*—Under Act XII of 1879, form 149 of sch. IV of the Code of Civil Procedure provided that sixty days should elapse between a sale in execution of a decree and its confirmation. A sale having been confirmed before the expiry of sixty days,—*Held* that the sale was not rendered inoperative, and that its effect was not postponed by reason of the provision in form No. 149. HAJI *v.* ATHARAMAN. MUSSA *v.* ATHARAMAN . . . . . **I. L. R., 7 Mad., 512**

362. ———————— *Order confirming sale after order setting it aside.*—A sale in execution of a decree was set aside by a subsequent decree of 9th March 1861, but was afterwards allowed to stand by an order of 7th May 1862. As no suit was brought to set aside the latter order, it was held to be a final judicial proceeding, and the sale declared to be good and valid. MUNNOO LALL *v.* CHOONEE SHAHOO . . . . . . **7 W. R., 116**

363. ———————— *Objection for irregularity disallowed—Sale set aside on other grounds.*—On application by the judgment-debtor to the Principal Sudder Ameen to set aside the sale by auction of a house in execution of a decree, on the grounds of material irregularities in publishing and conducting the sale, from which the applicant sustained substantial injury, the objections were disallowed as untenable, and the sale confirmed. But the District Judge on appeal set aside the sale on a ground on which he had no authority to interfere. On petition to the High Court by the purchaser of the house,—*Held* that the order of the Judge must be set aside as illegal, and the original order, confirming the sale, allowed to stand. KOSHTI *v.* NARAYAN DHULAPPA . . . **3 Bom., A. C., 110**

364. ———————— *Security by manager of lunatic—Second attachment and sale before security given—Attachment without sale, Validity of.*—The plaintiff, as manager of the estate of her husband, a lunatic, obtained a decree and attached and became the purchaser of the lands of the defendant in execution of the decree. The Judge required her to give security for the proceeds of the sale before he would allow actual possession to be given to her. The sale was confirmed, but several months elapsed before she found security, and meanwhile the same lands were attached and purchased by other creditors under another decree against the said debtor, and possession was given to them. *Held* (reversing the decision of the High Court) the title of the plaintiff must prevail. The security was ordered for the protection of the lunatic against misappropriation by his manager; it was not a proceeding affecting the judgment-debtor. The second sale ought not to have been ordered or confirmed. Under the Code of Civil Procedure, property may be attached without view to immediate sale. SARODA PROSAUD MULLICK *v.* LUTCHMEEPUT SING DOOGUR **[10 B. L. R., 214**
17 W. R., 289: 14 Moore's I. A., 529

365. ———————— *Second sale before confirmation—Separate suit—Effect of sale before confirmation.*—The plaintiff and the defendants *C* and *D* were the co-owners of a portion of a shikmi talukh in the 10 annas share of a zamindari belonging to the defendant *A*. *A*, having succeeded in enhancing the rent of the tenure, obtained a decree for arrears of rent at the enhanced rate, which she proceeded to execute in 1880. In 1881 she obtained another decree for arrears of rent of a subsequent period, in execution of which the tenure was put up to auction and sold for R15,000 on 20th July 1881, *A* herself being the purchaser. Before this sale was confirmed, the tenure was, on 20th September 1881, again put up for sale in execution of the first decree, and was purchased by *A* for R10. The plaintiff and *C* and *D* applied to have both sales set aside on the ground of irregularity. The application as regarded the sale of 20th September 1881 was rejected on 30th December 1881, and this order was confirmed by the High Court on 14th August 1882 and (on review) 21st March 1883. Meanwhile the sale of the 20th July 1881 was set aside by the order of the Subordinate Judge on 19th June 1882. In a suit against *A*, *B* (the agent of *A*), *C*, and *D*, brought on the 20th March 1884, in which the plaintiff prayed that the sale of 20th September 1881 "be declared ineffectual and be set aside, and that the plaintiff do recover possession of the property,"—*Held* that, the suit being not one to set aside the sale on the ground of fraud or anything connected with the sale itself, but on account of the setting aside of the first sale, which

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17. SETTING ASIDE SALE—*continued.*

took place long after the second sale had been confirmed, and when no execution proceedings were pending in which it was possible for the plaintiff to raise the question, the suit would lie. *Saroda Churn Chuckerbutty* v *Mahomed Isuf Meah, I L R, 11 Calc, 376,* distinguished *Held* also that the first sale, not having been set aside at the time of the sale, was at that time, although it had not been confirmed, a good and effectual sale to pass the property as against the plaintiff and *C* and *D*, so that there was nothing left to pass under the second sale In the interval between the sale and the confirmation of sale there is not merely a contract for sale, but an inchoate transfer of title which only requires confirmation to protect it, a sale actually takes place which, if not made absolute, must be set aside. *Sharoda Prosad Mullick* v *Luchmeeput Singh Doogur, 14 Moore's I A, 529: 10 B L R, 214,* cited PRANGOUR MAZOOMDAR v HIMANTA KUMARI DEBYA [I. L. R, 12 Calc, 597

366 ———— *Civil Procedure Code, ss 311, 312—Objection to sale—Legal disability—Limitation Act (XV of 1877), s 7—Order confirming sale before time for filing objections has expired—Appeal from order* —Although

sale before the time allowed for filing objections to the sale has expired, whether or not that Court could entertain such objections after confirming the sale, the High Court on appeal is bound to interfere and to

half to have been rightly rejected, the second was made by a duly authorized guardian, and with regard to s. 7 of the Limitation Act (XV of 1877) was not barred by limitation, the judgment debtor had therefore a right to make it, and the Court should have entertained and dealt with it before proceeding to confirm the sale or grant a sale certificate. The order disallowing the application and the order confirming the sale were set aside, and the case remanded for disposal of the appellant's objections. *Phoolbas Koonwur* v *Jogeshur Sahoy, I L R, 1 Calc, 226,* referred to. BALDEO SINGH v KISHAN LAL [I L R., 9 All, 411

(*b*) IRREGULARITY

367. ———— **Objections to sale for irregularity**—*Duty of Court—Procedure* —Where a judgment debtor objects to the sale of attached property, it is the duty of the Court executing the decree to try the validity of the objections. GUNESH LALL TEWAREE v BINDOO BASHINEE [24 W. R, 85

368. ———— **Application to set aside sale**—*Civil Procedure Code, 1859, s 256—Procedure.*—The issue which arises when a petition is

party fair and reasonable opportunity of bringing the necessary evidence on or before that day IN THE MATTER OF THE PETITION OF BROJO MOHUN THAKOOR BROJO MOHUN THAKOOR v AMEENOODDEEN [20 W. R, 424

369 ———— *Discretion of*

the sale. POULSON v DUNN 18 W R, 11

IN THE MATTER OF UMIRTO LALL BOSE [18 W. R, 11 note

Contra, RAJ COOMAR SINGH *alias* NANHOO LALL v LALLJEE SAHOO . . . 18 W. R., 333

As to what the term "applicant" included, there were under Act VIII of 1859 diverse rulings some

VENKATESH v VASUDEV ANANT 11 Bom., 15

and others that judgment-debtors and not third parties were meant LUCHMEEPUT SINGH DOOGUR v MOOKTAKASHEE DEBIA . 9 W. R., 388

S C upheld on review. MOOKTAKESHEE DEBIA v LUCHMEEPUT SINGH DOOGUR . 10 W. R., 137

JOGE NARAIN SINGH v BHUGBANO [2 W. R., Mis., 13

PURSHOTTAM VITHAL v PURSHOTTAM ISWAR [I. L. R, 8 Bom., 532

LUCHMEEPUT SINGH v ADOITO CHURN MULLICK . . . . . 24 W. R., 452

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17. SETTING ASIDE SALE—*continued.*

HARADHONE SHAMUNTO *v.* GOLUCK CHUNDER SHAMUNTO . . . . . 25 W. R., 79

MAINA KOER *v.* LUCHMUN BHUGGUT [1 C. L. R., 250

MAN KUAR *v.* TARA SINGH [I. L. R., 7 All., 583

370. ——— **By whom application may be made**—*Objection to sale by third person—Civil Procedure Code, 1882, s. 311.—Held* that persons other than the decree-holders or the persons whose property was sold in execution of decree were not competent to apply to the Court under s. 311 of the Civil Procedure Code to set aside the sale. MAN KUAR *v.* TARA SINGH . I. L. R., 7 All., 583

371. ——— *Code of Civil Procedure (Act X of 1877), s. 311.*—The words "any person whose immoveable property has been sold" in s. 311 of the Code of Civil Procedure do not include a person who has purchased the same property at a prior execution-sale, such prior sale not having been confirmed. IN THE MATTER OF THE PETITION OF BHAGABUTI CHURN BHUTTACHARJEE CHOWDHRY. BHAGABUTI CHURN BHUTTACHARJEE CHOWDHRY *v.* BISHESHWAR SEN [I. L. R., 8 Calc., 367

S. C. BHAGABATI CHARAN BHUTTACHARJEE *v.* KALI KUMAR CHUTTAH . . 10 C. L. R., 441

372. ——— *Civil Procedure Code, 1885, s. 311—"Any person whose immoveable property has been sold," Interpretation of.*—The words "any person whose immoveable property has been sold," in s. 311, are sufficiently wide to include a person who is neither the decree-holder nor the judgment-debtor, nor the auction-purchaser; but who alleges that the property sold in execution is his. ABDUL HUQ MOZOOMDAR *v.* MOHINI MOHUN SHAHA [I. L. R., 14 Calc., 240

373. ——— *Civil Procedure Code, ss. 311, 295—Person entitled to apply to set aside sale—"Decree-holders," entitled to rateable distribution.*—Where one decree-holder had attached certain land, and another decree-holder against the same debtor had entitled himself to rateable distribution of the assets under s. 295 of the Code of Civil Procedure,—*Held* that the latter was entitled to apply, under s. 311 of the Code, to set aside the sale on the ground of material irregularity. LAKSHMI *v* KUTTUNNI . . . . I. L. R., 10 Mad., 57

ATHAPPA CHETTI *v.* RAMA KRISHNA NAYAKHAR [I. L. R., 21 Mad., 51

374. ——— *Civil Procedure Code, s. 311—Objection to sale by wife of judgment-debtor.*—A person who claims to be a purchaser from a judgment-debtor prior to an attachment is not entitled to come in under s. 311 of the Civil Procedure Code and object to the sale of the judgment-debtor's property. *Abdul Huq Mozoomdar* v. *Mohini Mohun Shaha, I. L. R., 14 Calc., 240,* overruled. Rule that a person applying to set aside a sale for irregularity must be one who has sustained substantial injury arising therefrom, as laid down in *Joge Narain Singh* v. *Bhugbano, 2 W. R., Mis., 13,* and explained by *Krishnarav Venkatesh* v. *Vasudev Anant, 11 Bom., H. C., 15,* approved. ASMUTUNNISSA BEGUM *v.* ASHRUFF ALI [I. L. R., 15 Calc., 488

375. ——— *Person claiming by title paramount to, or independently of, judgment-debtor—Civil Procednre Code, s. 311.—Held* by MAHMOOD, *J.*, that a person claiming by title paramount to, or independent of, the judgment-debtor is within the meaning of s. 311 of the Code. *Asmutunnissa Begum* v. *Ashruff Ali, I. L. R., 15 Calc., 488,* dissented from. *Abdul Huq Mozoomdar* v. *Mohini Mohun Shaha, I. L. R., 14 Calc., 240,* followed. SHEO PRASAD *v.* HIRA LAL I. L. R., 12 All., 440

376. ——— *Civil Procedure Code, s. 311—Application to set aside execution sale—Remedy of one claiming adversely to the judgment-debtor.*—A person alleging himself to be the undivided brother and, as such, the legal representative of a deceased judgment-debtor applied to have set aside a sale of certain property alleged by him to be joint family property, which had taken place in execution of the decree. *Held* that the proper remedy of the applicant was a regular suit, and not a proceeding under Civil Procedure Code, s. 311. SUBBARAYADU *v.* PEDDA SUBBARAZU [I. L. R., 16 Mad., 476

377. ——— *Civil Procedure Code, ss. 311, 295—"Decree-holder."*—The term "decree-holder" in s. 311 of the Code of Civil Procedure is not limited to the decree-holder who instituted the execution proceedings, but may include a decree-holder who is entitled to come in and share in the proceeds under s. 295 of the Code. *Lakshmi* v. *Kuttunni, I. L. R., 10 Mad., 57,* approved. AJUDHIA PRASAD *v.* NAND LAL SINGH [I. L. R., 15 All., 318

378. ——— *Civil Procedure Code, s. 311—Application to set aside sale in execution—Decree-holder—Parties.*—The decree-holder is a necessary party to an application under s. 311 of the Code of Civil Procedure. Hence where a judgment-debtor applied under the above-mentioned section to have a sale in execution of a decree against him set aside and made no attempt to implead the decree-holder until long after limitation had expired,—*Held* that the application must be dismissed. *Karamat Khan* v. *Mir Ali Ahmed, Weekly Notes (All.), 1891, p. 121,* referred to. ALI GAUHAR KHAN *v.* BANSIDHAR . . I. L. R., 15 All., 407

379. ——— *Civil Procedure Code (Act XIV of 1882), ss. 311, 312, 313, 622—Application by auction-purchaser to set aside sale on ground of his having been deceived as to extent of estate sold—Remedy of auction-purchaser—Superintendence of High Court.*—A purchaser at a Court-sale, alleging that he had been

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—continued

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misled by a misrepresentation as to the extent of the estate which he had believed to be put up for sale, obtained, on his petition before confirmation, a summary order setting aside the sale *Held* that the High Court had rightly cancelled this order, exer cising its authority under s 622 of the Code of Civil Procedure, that the purchaser, though he would have his remedy, on his taking the appropriate one, if he had been i duced by fraud to pay a larger price than he otherwise would have offered, had no right to apply under either s 311 or 313 of the Code of Civil Procedure (as they provided only for the particular cases to which they referred), and that s 312, in the absence of cases falling within those sections required that the sale should be confirmed BIRJ MOHUN THAKUR *v* RAI UMA NATH CHOWDHRY . . I. L R., 20 Calc, 8
[L R, 19 I A., 154

380. ———————— *Civil Procedure Code, s 311—Objection to sale by person claiming to be the real owner—Benamidar, Decree against—Per* PETHERAM, *C J*, and GHOSE, *J* (BEVERLEY, *J*, dissenting), where immoveable property has been sold in execution of a decree against the ostensible owner as his property a person claiming to be the beneficial owner is entitled to come in under s 311 of the Code of Civil Procedure and object to the sale *Asmutunnissa Begum* v *Ashruff Ali, I L R, 15 Calc., 488,* followed ABDUL GANI *v* DUNNE . I. L. R, 20 Calc, 418

381. — — — — *Civil Procedure Code, ss 295, 311—Rateable distribution*

. . . .

holder" in s 311, nor is he entitled to apply under that section to set aside the sale *Deboki Nundon Sen* v *Hart, I L R, 12 Calc, 294,* and *Lakshmi* v. *Kuttunni, I L R., 10 Mad 57,* referred to CHATTRAPAT SINGH *v* JADUKUL PROSAD MUKERJEE
[I. L. R., 20 Calc., 673

382 ———————— *Civil Procedure Code (1882), s 311—Application to set aside a sale of a tenure by a purchaser from the judgment-debtor prior to attachment*—A person who claims to be a purchaser of a tenure prior to attachment from a judgment debtor whose interest in the tenure has been sold in execution of a decree for its own arrears of rent is entitled to apply, under s 311 of the Code of Civil Procedure, to set aside the sale *Asmutunnissa Begum* v *Ashruff Ali, I. L R, 15 Calc, 488,* distinguished AUBHOYA DASSI *v* PUDMO LOCHUN MONDOL
[I. L. R., 22 Calc., 803

383. ———————— *Civil Procedure Code, s. 311—'Decree-holder"—Attaching credit of application to set aside sale.* An attaching creditor is not a "person whose immoveable property is sold" within the meaning of s. 311, nor does he come within the words "the decree-holder" which appear at the commencement of that section The term "decree-holder" in s 311 means the decree-holder who brings the property to sale and not any decree holder. *Asmutunnissa Begum* v *Ashruff Ali, I L R, 15 Calc, 488,* referred to *Lakshmi*

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Das Marwari v *Ananda Ram Marwari, 2 C W N, 126,* distinguished MATUNGINI DASSI *v* MONMOTHANATH BOSE 4 C. W. N., 542

384 ———————— *Civil Procedure Code (1882, as amended by Act V of 1894), s. 310A—Judgment-debtor under decree on mortgage passed under Transfer of Property Act, s 88*

. . . .

of 1882, as amended by Act V of 1894) After the rejection by the lower Court of an application under s 310A, judgment debtors other than the applicant made an application under s 311 of the Code. *Held* that the present application under s 310A was not barred by reason of the proviso to that section ASHRUF ALI CHOWDHRY *v* NET LAL SAHU I. L R., 23 Calc, 682

385. ———————— *Code of Civil Procedure (1882), ss 310A and 311—Meaning of the words, 'he shall not be entitled to make an application under this section" in the proviso of s. 310A—Civil Procedure Code Amendment Act (V of 1894)*—The words "he shall not be entitled to make an application under this section" in the proviso of s 310A do not mean merely "he shall not be able to present an application" under the section, but the word "make" means "carry on' or 'prosecute" In a case where, after an application under s 310A of the Code of Civil Procedure, another application was made under s. 311 of the Code, the applicant was not entitled to have the benefit of the former section RAJENDRA NATH HALDAR *v* NILRATAN MITTER . I. L. R, 23 Calc, 958

. . . .

on payment being made by him under Civil Proceedure Code, s 310A The purchaser was the decree-holder. The application having been refused by the Courts of first instance and first appeal, the applicant appealed to the High Court *Held* that the appeal was maintainable, and the appellant

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

was entitled to the relief sought. SRINIVASA AYYANGAR *v.* AYYATHORAI PILLAI [I. L. R., 21 Mad., 416

387. ———— *Civil Procedure Code (Act XIV of 1882), s. 310A—Sale in execution of mortgage-decree—Application by mortgagor under s. 310A, Civil Procedure Code—Transfer of Property Act (IV of 1882), s. 104, Rules framed under—Civil Procedure Code Amendment Act (V of 1894).*—*Held* by the Full Bench: S. 310A of the Civil Procedure Code (Act XIV of 1882, as amended by Act V of 1894) does not apply to sales of mortgaged property under the Transfer of Property Act (IV of 1882). The rules framed by the High Court (Circular order No. 13, dated 27th April 1892) under the provisions of s. 104 of the Transfer of Property Act do not make s. 310A applicable to such sales. *Ashruf Ali Chowdhry* v. *Net Lal Sahu, I. L. R., 23 Calc., 682,* overruled. *Raja Ram Singhji* v. *Chunni Lal, I. L. R., 19 All., 205,* dissented from. *Quære*—Whether a rule by the High Court under s. 104 of the Transfer of Property Act making s. 310A of the Civil Procedure Code applicable to sales of mortgaged property under the said Act would not be *ultra vires.* KEDAR NATH RAUT *v.* KALI CHURN RAM [I. L. R., 25 Calc., 703 2 C. W. N., 353

See DAKSHINA MOHUN ROY *v.* BASUMATI DEBI [4 C. W. N., 474

where this case is explained and where it was held that s. 104 of Transfer of Property Act is an enabling section and the rules made by the High Court (Circular order No. 13, dated 27th April 1892) under the provision of s. 104 do not limit the applicability of the Code of Civil Procedure as regards sales held in execution of mortgage decrees.

388. ———— *Civil Procedure Code (Act XIV of 1882), s. 310A—Right to apply under the section—Person who has contracted to purchase land.*—A person who has contracted to purchase land, or an interest in land, does not by such contract become the owner in equity of such land or such interest (s. 54 of the Transfer of Property Act, IV of 1882). He has a personal right against his vendor or the assignee with notice of his vendor to compel the latter by a suit for specific performance to perform his contract: but he has no direct right over the land. *Held* accordingly that a person who had contracted to purchase certain land which was subject to mortgage, and was sold in execution by the mortgagee, was not the owner of the land, and was therefore not entitled to apply to set aside the sale under s. 310A of the Civil Procedure Code. MAHADEO CHINTAMAN WADEKAR *v.* VASUDEV J. KIRTIKAR . . . I. L. R., 23 Bom., 181

389. ———— *Civil Procedure Code, 1882, s. 310A—Civil Procedure Code Amendment Act (V of 1894)—Execution-sale—"Person whose immoveable property has been sold"—Prior private purchaser of property sold in execution.*—A person who has purchased property which is afterwards sold in execution of a decree obtained against his vendor is not entitled under s. 310A of the Civil Procedure Code to have the execution-sale set aside. RAMCHANDRA DHONDO *v.* RAKHMABAI [I. L. R., 23 Bom., 450

390. ———— *Civil Procedure Code, 1882, s. 310A—Right of benamidar to apply to set aside sale.*—A benamidar of a person whose immoveable property is sold has a right to apply to have the sale set aside under s. 310A of the Code of Civil Procedure. BASI PODDAR *v.* RAM KRISHNA PODDAR . . . . 1 C. W. N., 135

391. ———— *Civil Procedure Code (Act XIV of 1882), s. 310A—Application to set aside sale by purchaser from judgment-debtor after auction-sale.*—A purchaser at a private sale from the judgment-debtor after sale in execution has no *locus standi* to make an application under s. 310A of the Civil Procedure Code. HAZARI RAM *v.* BADRI RAM . . . 1 C. W. N., 279

392. ————*Civil Procedure Code (1882), s. 311—Application by person not party to decree.*—Land having been sold in execution of decree, one claiming that it had been held by the judgment-debtor benami for him applied that the sale be cancelled under s. 311. He was not a party to the decree, and on that ground his petition was dismissed. *Held* that the fact of the petitioner being a stranger to the decree did not preclude him from obtaining the relief sought under s. 311. TIMMANA BANTA *v.* MAHABALA BHATTA [I. L. R., 19 Mad., 167

393. ———— *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Plea to jurisdiction of Court to sell—Civil Procedure Code, s. 320.*—*Held* that in an application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree, it is not competent to the applicant to raise, nor to the Court to entertain, any plea to the jurisdiction of the Court executing the decree, as, for example, a plea that the property sold, or part of it, was ancestral and ought to have been sold in accordance with the provisions of s. 320 of the Code. SHIRIN BEGAM *v.* AGHA ALI KHAN [I. L. R., 18 All., 141

394. ———— *Application to set aside sale—Grounds which alone may be taken.*—A Court to which an application under s. 311 of the Code of Civil Procedure, to set aside a sale held in execution of a decree, is made, is limited to the grounds set forth in that section. If the Court fails to find both a material irregularity in publishing or conducting the sale together with consequent loss to the applicant, it is bound to dismiss the application and confirm the sale. It cannot set aside the sale upon other grounds not pleaded by the applicant. *Tassaduk Rasul Khan* v. *Ahmad*

SALE IN EXECUTION OF DECREE
—continued.

17 SETTING ASIDE SALE—continued

Husain, I L R, 21 Calc, 66 L R, 20 I. A, 176, and *Shirin Begam v Agha Ali Khan, I L. R, 18 All., 141*, referred to. HARBANS LAL v KUNDAN LAL . . . . I. L. R., 21 All., 140

395. ———— *Civil Procedure Code, s 311—Person whose property has been sold—Mortgagee—Transfer of Property Act (IV of 1882), ss. 86 87*—The mortgagees of a certain tenure obtained, on 11th September 1884, under s 86 of the Transfer of Property Act, a decree for foreclosure, which declared that, on failure to pay the amount

Civil Procedure Code to have the sale set aside for material irregularity *Held* that, under s 86 of the Transfer of Property Act, the mortgagees had such an interest in the property as brought them within the words of s 311, "person whose property has been sold," and entitled them to make the application RAKHAL CHUNDER BOSE v DWARKA NATH MISSER . I. L. R, 13 Calc., 346

laid down as a general proposition of law that under no circumstances can a sale in execution of a decree be set aside as against a *bonâ fide* purchaser for valuable consideration and without notice In a suit brought to set aside such a sale, it is for the Court to determine whether it will be in accordance with the principles of justice, equity, and good conscience that the sale ought to be set aside or not ABDUL HYE v NAWAB RAJ B. L. R, Sup. Vol., 911

S C. ABDUL HYE v. NAWAB RAJ 9 W. R., 196

gation into the circumstances attending such sale, and not rely on the mere report of a nazir SOOKH RAJ SINGH v. TUFFAZZOOL HOSSEIN [2 N. W, 142

398. ———— Finding as to irregularity—*Civil Procedure Code, 1859, s 256—Material injury*—On an application to set aside a sale of immoveable property in execution of a decree under s 256, Act VIII of 1859, before ascertaining whether any substantial injury has accrued to the debtor, it was held that the Court must come to a distinct finding that there has been an irregularity in publishing or conducting the sale. PARBUTTY v. GIRDAREE LAL . 6 W. R., Mis, 125

399. ———— Objections to sale being made absolute—*Civil Procedure Code, 1859,*

SALE IN EXECUTION OF DECREE
—continued.

17. SETTING ASIDE SALE—continued.

of the Code of Civil Procedure, under which a sale could be set aside on the ground of material irregularity in publishing or conducting it NIL KOMUL CHUCKERBUTTY v. SHAMA SOONDUREE [6 W. R., Mis., 46

VIRSINGAPPA BIN BASLINGAPPA v SADASHIVAPPA APPA GOLKHANDI 7 Bom, A. C, 74

ment-debtor, and that therefore the sale conveyed nothing, is an objection which must be raised before the sale in execution, and is not a ground for setting aside the sale for irregularity CHOWDHRY WAHED ALI v JUMAYE 6 W. R, Mis., 116

401 ———— *Civil Procedure Code (1882), ss 311 and 224—Omission to transmit certificate to Court executing decree*—The omission to transmit to the Court executing the decree the certificate required by s 224, Civil Procedure Code, is a mere irregularity which would not vitiate the sale ABBUBAKER SAHEB v MOHIDIN SAHEB I. L R., 20 Mad, 10

was void owing to the fact that subsequent to decree and prior to sale he had been declared insane under Act XXXV of 1858 The second defendant was the auction purchaser. *Held* by BEST, J, that objection could be taken under s 311, Civil Procedure Code, on the above ground before the sale had been confirmed and certificate granted *Held* by SUBRAMANYA AYYAR, J, that these facts only amounted to a material irregularity within s 311, Civil Procedure Code, and that the plaintiff must prove substantial injury NARAYANA KOTHAN v KALIANASUNDARAM PILLAI I. L. R, 19 Mad., 219

403. ———— *Omission to make attachment*—It was doubted at one time whether a sale could be set aside by reason of an omission to attach the property. JOWHUROOZ ZUMMA KHAN v. BANEE MADHAB NUNDUN 11 W. R., 226

404. ———— *Civil Procedure Code, 1859, s. 201—Sale without attachment*—

ment is illegal. The words "attachment and sale" in s. 201 must be taken together, and not distributively LUCHMEEPUT v LEKRAJ ROY . 8 W. R., 415

405. ———— *Sale of property without attachment—Decree for money—Invalidity*

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

of sale — Civil Procedure Code, Ch. XIX and s. 254.—A regularly perfected attachment is an essential preliminary to sales in execution of simple decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void. MAHADEO DUBEY *v.* BHOLA NATH DICHIT [I. L. R., 5 All., 86

406. ——— *Effect on sale when confirmed, of the absence of attachment.*—After a sale has been confirmed and a sale-certificate granted to the purchaser, the sale is not to be considered as a nullity merely by reason of the absence of any attachment. *Sharoda Moyee Burmonee* v. *Wooma Moyee Burmonee, 8 W. R., 9,* followed. *Mahadeo Dubey* v. *Bhola Nath Dichit, I. L. R., 5 All., 86,* dissented from. KISHORY MOHUN ROY *v.* MAHAMED MUJAFFAR HOSSEIN . I. L. R., 18 Calc., 188

407. ——— *Omission to attach property second time—Sale without attachment.*—Property already under attachment at the suit of the creditor to enforce part of a debt accrued due in a mortgage transaction at an earlier period was sold in satisfaction of his decree for instalments subsequently due by the same debtor. A second attachment would have been a mere formality, and was not material to the validity of the sale. DOSIBAI *v.* ISHVARDAS JAGJIVANDAS [I. L. R., 15 Bom., 222 L. R., 18 I. A., 22

408. ——— *Attachment before judgment—Termination of attachment—Sale in execution—Material irregularity in publishing or conducting sale without attachment—Waiver—Civil Procedure Code, ss. 311, 483.*—The plaintiff instituted a suit against defendants for recovery of money, and previous to judgment, that is, on the 8th of January 1885, applied for, and on the 11th obtained, an order for attachment of several houses and premises belonging to defendant, and such attachment was made. The suit was dismissed, but eventually on appeal it was decreed; but the attachment was never withdrawn. Plaintiff then applied for execution of his decree, and his application was granted by an order directing that the property of the judgment-debtor should be notified for sale on the 1st February 1887, and accordingly on the 21st December 1880 a sale notification was issued. The judgment-debtor twice applied for postponement of sale, but his applications were refused, and the sale took place on the date fixed. The judgment-debtor then objected to the confirmation of the sale, urging that the property sold was never attached in execution of the decree, and the attachment previous to judgment was infructuous, because afterwards the claim was dismissed by the Court of first instance; that there had been several other irregularities in publishing and conducting the sale; and that, owing to the irregularities, the property had been sold at a grossly inadequate price, causing substantial injury. The Subordinate Judge overruling the objection confirmed the sale. On appeal by the judgment-debtor,—*Held*, following *Mahadeo Dubey* v. *Bhola Nath Dichit, I. L. R., 5 All., 86,* that a regularly perfected attachment is an essential preliminary to sales in execution of decrees for money; and where there has been no such attachment, any sale that may have taken place is not simply voidable, but *de facto* void, and may be set aside without any inquiry as to substantial injury being sustained by the judgment-debtor for want of a valid attachment; and that an attachment before judgment, like a temporary injunction, becomes *functus officio,* as soon as the suit terminates. Further, that the phrase "a material irregularity in publishing or conducting" in the first paragraph of s. 311 of the Code of Civil Procedure should be liberally construed, and that absence of attachment of property at the time of sale thereof is "a material irregularity," attachment being the first step which a Court in executing a simple money-decree has to take to assert its authority to bring property to compulsory sale. RAM CHAND *v.* PITAM MAL [I. L. R., 10 All., 506

409. ——— *Omission to attach property—Decree on mortgage.*—The omission to cause an attachment to be made in execution of a decree for the realization of a mortgage-debt does not affect the validity of a sale of the mortgaged property in execution of such decree. TINCOURI DEBYA *v.* SHIB CHANDRA PAL CHOWDHURY [I. L. R., 21 Calc., 639

MUNIAPPA NAIK *v.* SUBRAMANIA AYYAN [I. L. R., 18 Mad., 437

410. ——— *Sale in execution held in pursuance of an attachment made under a wrong section of Civil Procedure Code—Civil Procedure Code, ss. 268 and 274—Irregularity in attachment.*—*Held* that a sale of the mortgagee's rights under a mortgage duly held and confirmed was effectual to pass the mortgagee's rights to the auction-purchaser, even though the attachment subsequent to which such sale was held might have been made under a wrong section of the Code of Civil Procedure. *Balkrishna* v. *Masuma Bibi, I. L. R., 5 All., 142: L. R., 9 I. A., 182; Mahadeo Dubey* v. *Bhola Nath Dichit, I. L. R., 5 All., 86; Ram Chand* v. *Pitam Mal, I. L. R., 10 All., 506;* and *Karim-un-nisa* v. *Phul Chand, I. L. R., 15 All., 134,* referred to. SHEO CHARAN LAL *v.* SHEO SEWAK LAL [I. L. R., 18 All., 469

411. ——— *Sale without previous attachment—Material irregularity.*—*Held* that the absence of an attachment prior to the sale of immoveable property in execution of a decree amounts to no more than a material irregularity, but is not sufficient, unless substantial injury is caused thereby, to vitiate the sale. *Ram Chand* v. *Pitam Mal, I. L. R., 10 All., 506; Ganga Prasad* v. *Jag Lal Rai, I. L. R., 11 All., 333; Harbans Lal* v. *Kundan Lal, Weekly Notes, All., 1898, 312;* and *Tassaduk Rasul Khan* v. *Ahmad Husain, I. L. R., 21 Calc., 66,* referred to. *Mahadeo Dubey* v. *Bholanath*

SALE IN EXECUTION OF DECREE —continued

17 SETTING ASIDE SALE—*continued.*

Dichit, I L R, 5 All, 86, distinguished SHEO DHYAN *v* BHOLANATH **I. L. R, 21 All., 311**

412 ———— *Irregular at- ...9, s 285—* ... y by a Court ... e, before the ... vitiates the sale subsequently made of that property as not being made in strict observance of the procedure prescribed by s 285 Act VIII of 1859 SHURUTOOLLAH MERDHA *v* GOOROO CHURN DASS **8 W. R, 310**

MOOKTA KESHEE DEBEE *v* LUNUCK MONEE DEBEE **7 W. R, 267**

See MOOKTAKESHEE DEBIA *v* LUCHMEEPUT SINGH DOOGUR **10 W R., 137**

Upholding on review LUCHMEEPUT SINGH *v* MOOKTAKASHEE DEBIA **9 W R., 388**

413 ———— *Process issued simultaneously and not successively*—In the case of moveable property, process of attachment and sale may be issued successively or simultaneously, but in regard to immoveable property, process of attachment and sale should be issued successively but if issued simultaneously, and the attachment has been made *bonâ fide*, and the sale proclamation issued as required by law, with an interval of thirty days between it and the sale, such irregularity is not a sufficient ground for setting aside the sale, as no material injury could accrue to the debtor thereby. HURO SOONDUREE DEBIA *v* BROJO GOBIND SHAHA **[4 W R, Mis, 12**

414. ———— *Irregularity in attachment—Civil Procedure Code, 1859, ss 235, 259, 256*—On an application made to a Principal Sudder Ameen for execution of a decree against a judgment debtor's estate situate in a different district that functionary caused a prohibitory order under s 235, Act VIII of 1859, to be issued through the Judge of the other district, after which, without *further procedure under s 285 and the sections following* or further attachment, the property was put for sale and purchased, no certificate under s. 259 being given to purchaser *Held* that the sale was illegal, and that there had been no valid transfer of right title, and interest in the property LUCHMEEPUT SINGH DOOGUR *v* MOOKTAKASHEE DEBIA **[9 W R., 388**

S C upheld on review MOOKTAKESHEE DEBIA *v* LUCHMEEPUT SINGH DOOGUR **10 W R 137**

415 ———— *Irregularity in attachment—Attachment of debt—Civil Procedure Code, 1877, ss 268 278, and 287—Proclamation of sale*—A decree-holder by a prohibitory order issued under s 268 of the Civil Procedure Code, attached a debt due to his judgment debtor The person served with the order applied, under s 278, to have the attachment removed *Held* that the application could not be entertained under s. 278 that section having no application to the case, but that, before issuing a proclamation of sale, in execution ... the nature and value of the property proclaimed for sale If the property of which sale is sought is a debt and the Court receives notice from the alleged debtor that no debt exists, the Court should satisfy itself as to the existence or otherwise of the debt, and if it comes to the conclusion that no debt exists, should abstain from proceeding to sale HARILAL *v* ABHESING MERU **I. L R., 4 Bom, 323**

416 ———— *Irregularity in issue of notification of sale and attachment—Misconduct of decree holder*—Before a sale is confirmed, a party objecting to the irregularity of the sale proceedings on the ground that the notification of sale and attachment has not been properly issued, should be allowed proof of non service or of insufficient service. The misconduct of a decree holder ... ing in material injury to the debtor be proved RETHBUNJUN SINGH *v* MITTURJEET SINGH **[4 W R, Mis, 9**

417 ———— *Irregularity in service of prohibitory order—Act VIII of 1859, ss 236 and 243—Purchase of property by decree holder—Practice of English Courts*—In execution of a decree, the defendant caused a decree of the plaintiff awarding him R925 to be attached, and, under s 236, Act VIII of 1859 caused the prohibitory order to be fixed in a conspicuous part of the Court house and copies thereof to be delivered to the judgment debtors The decree was subsequently sold by auction and the defendant purchased it for R20 On special appeal by the plaintiff upon the ground that the sale was irregular as the prohibitory order had not been served upon him—*Held* that the prohibitory order having been served in accordance with the provisions of s 236 Act VIII of 1859 was legal and regular *Held* also that the Court executing the defendant's decree ought not to have sold the plaintiff's decree but should have under s 243, appointed a manager to enforce plaintiff's decree That a decree holder ought not to be allowed to bid and purchase at a sale in execution of his decree, without an order of Court previously obtained upon notice to the judgment-debtor Practice of English Courts regarding sale in execution of decrees discussed BANDHU ROY *v* HANUMAN SINGH **[3 B L R, A C, 320: 14 W. R., 406 note**

418 ———— *Irregularity in applying for execution of decree—Act VIII of 1859, s 207*—G and M obtained a money decree against A in the Court of the Principal Sudder Ameen on the 12th December 1864 This decree was reversed by the District Judge but on the 5th March 1866 the Sudder Court set aside the Judge's decree

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

and ordered a new trial. On the 5th May 1866 the District Judge affirmed the decree of the Court of first instance. On the 3rd December 1866 the High Court again set aside the Judge's decree and ordered a new trial. On the 14th January 1867 the District Judge again affirmed the decree of the Court of first instance, and, no appeal being preferred, the decree became final. The decree-holders had in the meantime taken proceedings to execute the decree, dated the 5th May 1866, and from time to time and finally on the 7th November 1870 they renewed these proceedings, in each instance referring to the decree dated the 5th May 1866, even after it was set aside, and the decree dated the 14th January 1867 passed. On the last application a sale of certain immoveable property belonging to *K* was ordered and took place on the 15th February 1871. *K* objected to the confirmation of the sale on the ground of the irregularity in the application, but his objections were disallowed and the sale was confirmed. He brought a suit to recover possession of the property from the auction-purchaser on the ground that the sale was a nullity. *Held per* STUART, *C.J.*, and PEARSON, TURNER, and SPANKIE, *JJ.*, that the sale ought not to be set aside, as the irregularity in applying for execution of the decree, dated the 5th May 1866, was an irregularity which did not prejudice the judgment-debtor. *Per* OLDFIELD, *J.*—That with reference to s. 257, Act VIII of 1859, the suit was not maintainable. GHAZI *v.* KADIR BAKSH . . I. L. R., 1 All., 212

419. ——————— *Irregularity in attachment—Confirmation of sale—Objection that property is not liable to attachment—Civil Procedure Code, 1882, ss. 278, 311, 312.—Held* that an objection made by one whose property was attached and sold in execution of a decree for the payment of money for the performance of which he had become a surety, that he was no party to the decree, and his property was not liable to be attached and sold, and therefore the sale was invalid, was not an objection entertainable under s. 311 of the Civil Procedure Code, and was consequently no ground for setting aside the sale under that section, especially as it was preferred for the first time on appeal, and, moreover, might have been taken under s. 278 at the time of attachment, when the objector would have had his remedy as therein provided. HUB LAL *v.* KANHIA LAL . . . . I. L. R., 7 All., 365

420. ——————— *Sale of property other than that hypothecated.*—A decree-holder is not precluded from taking any of his judgment-debtor's property in execution of his decree merely because he had a lien on particular properties. A sale therefore is not liable to be set aside because the property sold was other than that hypothecated in the bond. LALJEE *v.* SADIT HOSSEIN [4 N. W., 99

421. ——————— *Sale of property of third person—Right of suit—Civil Procedure Code, 1859, s. 252.*—A sale in execution of decree transfers to the purchaser nothing more than the rights and interests of the judgment-debtor at the time of attachment and sale; and s. 252 of Act VIII of 1859 did not prohibit an enquiry into the extent of those rights, or declare the owner of the property attached in execution of a decree passed against a third party, incompetent to assert his claim by suit. The sale of moveable property, belonging to a third party, in execution of a decree, was not a mere irregularity within the meaning of s. 252, and the owner of the property so sold was entitled to sue for its restoration, or for damages. SHAM SUNDER DASS *v.* RAHEEM BUKSH [6 N. W., 252

MOHANUND HOLDAR *v.* AKIAL MEHALDAR [9 W. R., 118

422. ——————— *Sale of portion of tenure under decree for rent—Sale of other portion under mortgage-decree.*—Where decrees for arrears of rent had been obtained by fractional share-holders in a tenure, and in execution thereof a moiety of the tenure had been sold, it appeared that the other moiety had been sold at the same time in execution of a mortgage-decree against some of the judgment-debtors in the rent suits, on an objection being taken to the confirmation of such sale on the ground that the whole tenure should have been sold in execution of the rent-decrees. *Held* that all that the decree-holders were entitled to have sold was the right, title, and interest of their judgment-debtors, and that they were in the position of ordinary creditors having no lien on the tenure; and that consequently the mortgagee being entitled to enforce his lien against the moiety covered by his mortgage, the sale of the remaining moiety in satisfaction of the rent-decrees was a good sale, and could not be set aside. MOHENDRO COOMAR DUTT *v.* HEERA MOHUN COONDOO. ISHANESWARY DASEE *v.* GOPAL DAS DUTT [I. L. R., 7 Calc., 723

423. ——————— *Sale of whole estate where a portion would suffice.*—A Subordinate Judge, on the application of a judgment-creditor, ordered the attachment and sale of an indigo concern consisting of several factories, and fixed the 9th March for the sale. Shortly before the date so fixed, he issued a direction to the District Judge's nazir that the sale should be effected in portions to be sold in succession. Upon this the District Judge removed the execution proceedings to his own Court, and issued a roobokari declaring the Subordinate Judge's order null and void, and ordering the property to be sold on the day fixed in one lot. This was accordingly done. *Held* that it was entirely within the Subordinate Judge's discretion to direct that the property should be sold in portions, even though it had been attached or proclaimed as an entirety. *Held* that, as it is damage to a person to have his whole property sold against his will to satisfy the claims of a creditor when the sale of a portion would suffice, the irregularity committed by the District Judge caused material injury to the judgment-debtors. ABDOOL HYE *v.* MACRAE [23 W. R., 1

SALE IN EXECUTION OF DECREE —*continued*

17. SETTING ASIDE SALE—*continued.*

Confirmed on review, MORGAN *v.* ABDOOL HYE [23 W. R., 393

424. ——— *Material irregularity in publishing or conducting sale in execution—Objection that property sold was not legally saleable—Civil Procedure Code, 1882, ss. 244, 311, 312*—An objection by a judgment debtor to a sale in execution of a decree on the ground that the property which was the subject of sale was not legally saleable, is not a matter which can be entertained by the Court under s 311 of the Civil Procedure Code, so as to afford a ground for setting aside the sale on account of material irregularity in publishing or conducting it *Ram Gopal v Khiali Ram I L R*,

out of the sale, but refers to the action of the officer who makes the sale, and not to anything done antecedent to the order of sale. *Olpherts v. Mahabir Pershad, L R, 10 I. A, 25,* referred to, RAMCHHAIBAR MISR *v* BECHU BHAGAT [I. L. R, 7 All, 641

425. ——— *Decree for sale of mortgaged property and for costs—Attachment and sale of other property for whole amount of decree—Suit to set aside execution sale—Civil Procedure Code, 1882, ss. 311, 312—Finality of order in execution proceedings*—In execution of a decree on a mortgage-bond, for the sale of the mortgaged property and for the costs of the suit, amounting to R1,000, certain houses were attached on the 30th September 1881, which were not part of the mortgaged property. On an objection raised by the judgment debtors that the decree was by its terms executable only against the mortgaged property, the High Court on appeal decided, on the 6th September 1882, that the houses were not liable to attachment and sale under the decree In the meantime, on the 15th June 1882, the houses had been put up for sale and purchased for R500, and the sale had been confirmed on the 16th August 1882 The judgment-debtors brought a suit against the purchaser to set aside the sale, on the ground that the houses were not saleable under the decree. *Held* that the decree, in

as they were made in respect of the costs as well of the principal and interest decreed *Per* MAHMOOD, *J*, that the suit was maintainable, and was not barred by any plea *in limine* *Abdul Hye v Nawab Raj, B L. R, Sup Vol, 911,* referred to Also *per* MAHMOOD, *J*, that inasmuch as the adjudication of the 6th September 1882 was one between the judgment-debtors on the one hand and the decree-holder on the other, and subsequent not only to the sale, but to the confirmation of the sale, and inasmuch as the Court was not then called upon to decide anything in relation to the nature of the decree as to costs, the order then passed could not be used against the purchaser Also *per* MAHMOOD, *J*, that it was doubtful whether, the attachment having been made for the whole amount of the decree and not for costs, and no separate proceedings having taken place in respect of the personal decree against the judgment debtor, the attachment, the notification of sale, and the sale itself were valid, but that everything that was said against these proceedings constituted matters falling under s 312 of the Civil Procedure Code, which enables parties to object to confirmation of sale, and that the[illegible]
firmation [illegible]
"materia[illegible]
the sale, [illegible]
present, upon that ground alone, was prohibited by the last part of s 312. RAGHUBAR DYAL *v* ILAHI BUKSH [I. L. R, 7 All, 450

426 [illegible]
due not [illegible]
an exe[illegible]
which [illegible]
had be[illegible]
house,[illegible]
rial in[illegible]
must be set aside JOYNARAIN GIRI *v* GOLUCK CHUNDER MYTEE 25 W. R., 183

427. ——— *Omission to give notice of execution—Civil Procedure Code, 1877, s 248*—An omission to give notice to the party against whom execution is proceeding, as provided by s 248 of the Civil Procedure Code, invalidates a sale in execution of the decree IN THE MATTER OF THE PETITION OF RAMESSURI DASSEE. RAMESSURI DASSEE *v* DOORGADAS CHATTERJEE [I. L. R., 6 Calc., 103: 7 C. L. R., 85

Contra, MUFASA *v* MAHOMED AKBAR GAZEE [2 W. R., 74

428. ——— *Omission to give notice of application for execution.*—The omission to give the notice required by s. 248 of Act X of 1877 to the judgment-debtor, on application for execution of the decree, affects the regularity of the sale which subsequently takes place in execution of the decree and the validity of the entire execution proceedings *Ramessuri Dassee v Doorgadass Chatterjee, I L R, 6 Calc, 103,* followed *Held* therefore where execution of a decree was applied for against the legal representative of a deceased judgment-debtor, and the notice required by s. 248 of

ing the decree by reason of such omission. *Quære*—

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17. SETTING ASIDE SALE—*continued.*

Whether such omission was an irregularity in "publishing or conducting" the sale within the meaning of s. 311 of that Act. IMAM-UN-NISSA BIBI *v.* LIAKAT HUSAIN . I. L. R., 3 All., 424

429. ———— *Omission to re-issue process after proceedings have been struck off.*—After the striking off of an execution case, the omission to re-issue the processes required by law on the admission of a third party as decree-holder is not a material irregularity in the case. BISHEN DYAL SINGH *v.* KHUDEEMUN . W. R., 1864, 359

430. ———— *Irregularity in notice of sale—Death of decree-holder.*—The issue of a notice of sale after the death of the original decree-holder, and before any person had applied to be registered as the substituted decree-holder, is not an irregularity which would warrant the setting aside of a sale under Act VIII of 1859, s. 256. GOBIND CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE [22 W. R., 481

431. ———— *Irregularity in notice of sale—Proclamation of notice of liens.*—The inam village of Chundunpuri was sold by auction under a decree. The notice of sale stated that the sale would begin either at Maligam or Chundunpuri, and be completed at Maligam. *Held* that the notice of sale was sufficiently certain. The practice of karkuns reading aloud notices of liens on property about to be sold by auction is objectionable, but, in the absence of proof that the value of the property has been thereby deteriorated, it is not such an irregularity as will vitiate the sale. GOVIND HARI VALRKAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . . . 4 Bom., A. C., 164

432. ———— *Irregularity in giving particulars of sale—Omission to mention numbers, etc., of notes—Sale and production of notes—Civil Procedure Code, 1859, ss. 201, 238, 248, 249.*—The omission in a sale proclamation to mention particulars as to the numbers, value, etc., of Government promissory notes under attachment for sale is not such an irregularity as will vitiate the sale, though the lower Court would have exercised a sound discretion, under s. 249 of the Code, if it had called for such particulars. The sale of such notes through a broker is permissive under s. 248, and not obligatory. The production of the notes in Court was not essential, as they were in the custody of the Collector; s. 238 applying to cases in which property is in the possession or power of the judgment-debtor. LUCHMEEPUT *v.* LEKRAJ ROY 8 W. R., 415

433. ———— *Proclamation of sale not in prescribed form and without necessary particulars—Right of holders of other decrees to object—Civil Procedure Code, 1882, ss. 311, 314.*—A zamindar mortgaged his estate to a bank and the mortgagee obtained a decree in the High Court, in execution of which it was ordered that the zamindari should be sold village by village. Other persons held money decrees against the zamindar. One of them, in execution of his decree, had the zamindari put up for sale in one lot subject to the bank's mortgage, and with the leave of the Court purchased it himself. The other decree-holders applied to have the sale (which had not been confirmed) set aside on the ground of material irregularity in publishing the sale by which substantial injury was caused to them. The irregularities relied on were that the proclamation was not issued in the prescribed form, and did not state the extent of the property and the revenue assessed on it, or the amount of income derived from it, and no mention was made of the order of the High Court. *Held* that the sale should not be confirmed. ATHAPPA CHETTI *v.* RAMAKRISHNA NAYAKAN [I. L. R., 21 Mad., 51

See LAKSHMI *v.* KUTTUNNI [I. L. R., 10 Mad., 57

434. ———— *Sale of property otherwise than as advertised—Proof of damage—Advertisement of sale.*—When property is advertised to be sold in separate lots, and is afterwards sold in a lump, this is an irregularity, but the person who wishes to set aside the sale on the ground of such irregularity must show affirmatively, to the satisfaction of the Court, that substantial damage has, in fact, been sustained by him on account of such irregularity. Where therefore such damage had not been distinctly proved,—*Held* that the sale could not be set aside on the ground of the irregularity complained of. ROY NANDIPAT MAHATA *v.* URQUHART [4 B. L. R., A. C., 181: 13 W. R., 209

reversing URQUHART *v.* NUNDEEPUT MAHAPUTTUR [12 W. R., 492

435. ———— *Sale of property in separate lots instead of in one lot as advertised in proclamation of sale.*—*A* attached a decree which *B*, his judgment-debtor, had obtained against *C*, and in execution thereof he brought to sale land belonging to *C*. After the publication of the proclamation of sale, one of the advertised lots was subdivided into various lots for the purposes of the sale. *B* applied to have the sale set aside, and his application was refused. *Held*, on appeal by *B*, that the sub-division of the lots was no irregularity and the appellant was not entitled to the relief sought by him. SAMI PILLAI *v.* KRISHNASAMI CHETTI [I. L. R., 21 Mad., 417

436. ———— *Omission to make proclamation of sale—Civil Procedure Code (Act X of 1877), s. 311—Irregularity in publication of intended sale.*—An objection to the validity of a sale of revenue-paying land, on the ground that the revenue assessed upon it had not been stated in the proclamation of the intended sale, in accordance with s. 287 of Act X of 1877, was taken for the first time, in the Court of Appeal; on application to set aside the sale, on the ground that it had taken place without proclamation made, having been rejected by

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17. SETTING ASIDE SALE—*continued.*

the Court of first instance, which found that procla-

from it, remaining to be proved, as required by s. 311 of Act X of 1877. *Held* also that inadequacy of price having been alleged as substantial damage, without having been proved to be the effect of the non statement of the revenue, the applicant had not (as required by s 311) proved to the satisfaction of the Court that he had sustained substantial damage by reason of such irregularity MACNAGHTEN v. MAHABIR PERSHAD SINGH . I L R, 9 Calc, 656

S C OLPHERTS v MAHABIR PERSHAD SINGH [11 C L. R, 494 L R., 10 I. A, 25

reversing decision of High Court in MAHABIR PERSHAD SINGH v. OLPHERTS 9 C. L R, 134

437. ———— *Error in proclamation of sale as to incumbrance to which property was liable—Civil Procedure Code, 1882, ss 311, 312* —In a sale of immoveable property in execution of a decree, the proclamation of sale notified that

must have materially marred the fairness of the auction and affected the price, and that the sale must therefore be set aside, on the ground of material irregularity in publishing and conducting it. KANJI MAL v SAILO . . I L R., 8 All., 116

438 ———— *Civil Procedure Code, 1882, ss. 287, 311—"Material irregularity" in publishing or conducting a sale—Omission to*

the meaning of s. 311 of the Code. On such an irregularity being committed the judgment debtor whose lands have been sold is *primâ facie* entitled to be given an opportunity for proving that he has sustained substantial loss by reason of it MADARSAH MARACAYAR v PALANIAPPA CHETTI [I. L R., 23 Mad., 628

439. ———— *Error in overstatement of balance due on decree* —A sale in execution of a decree is not invalidated by the fact that the balance really due is overstated, there being no other irregularity in the publication and conduct of the sale. CHUTTUR SING v DHURRUM KOONWAR [1 N. W, Part 2, p 1: Ed. 1873, 61

440. ———— *Omission to give*

constitute an irregularity in the sale entitling the plaintiff to claim damages under s 252, Act VIII of 1859. KASSEE NATH ROY CHOWDHRY v. HULLODHUR ROY 2 W R., 60

441. ———— *Omission to state amount of decree—Civil Procedure Code, 1882, s 311* —The mere fact that the amount of rent payable in respect of a tenure brought to sale in execution of a decree is not stated in the sale-proclamation, is not a material irregularity within the meaning of s 311 of the Civil Procedure Code (Act X of

DOO. ISHANESWARY DASEE v GOPAL DAS DUTT [I L R, 7 Calc, 723

442. ———— *Omission of material part of notification of sale* —The sale noti-

ties advertised to be sold. Without this special notification, buyers would be summoned for one day, whereas the property might not be sold on that day or for several days after, and that would be an irregularity which would vitiate the sale, if the property were sold at an under-value for want of bidders BYKUNT NATH SANDYAL v. JUGGUT MOHUN SHAHA [24 W R., 240

443 ———— *Irregularity in affixing notification of sale.*—The affixing, in the Principal Sudder Ameen's Court, of a notification of sale in execution of a decree of the Small Cause Court

the judgment debtor in person, or in the village in which he lives ROMESH CHUNDER BANERJEE v JADUB CHUNDER CHATTERJEE [6 W. R., Civ Ref, 14

trict Court, the publication of the notice of sale at one of the inferior cutcheries was held to be legal and sufficient. HUBEEBOOL HOSSEIN v ALLENDER. HUBEEBOOL HOSSEIN v LAND MORTGAGE BANK [14 W. R., 44

445 ———— *Irregularity in publication of sale* —The affixing of a notice of sale in a not very conspicuous part of the land, when the judgment-debtor resides in a different district, is not

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—*continued.*

17. SETTING ASIDE SALE—*continued.*

sufficient to satisfy the requirements of justice. GOBIND CHUNDER MOOKERJEE *v.* RAM KOMUL CHATTERJEE . . . . . **25 W. R., 364**

446. ——— *Irregularity in publication of sale—Beng. Reg. XLV of 1793, s. 12—Delay.*—A suit was brought in 1852 to set aside an execution-sale made in 1841 on the ground of irregularity in not complying with the provisions of Bengal Regulation XLV, s. 12 of 1893, for the due publication of the sale. A summary suit under Bengal Regulation VII of 1825, s. 5, had been brought shortly after the date of the sale by the judgment-debtor, to set it aside on the ground of inadequacy of the purchase-money, which suit was dismissed. There was no allegation in that suit of any irregularity in the publication of sale. It appeared from the evidence in the suit of 1852 that the notice of sale was affixed at the dwelling-house of the judgment-debtor, the place where his rents were paid, but which was not part of the estate sold. It was not pleaded in the suit of 1852 that there was a town or village where the notification could be fixed as required by s. 12, Bengal Regulation XLV of 1793. The Sudder Court held that there had been an irregularity in the publication of the notice of sale, as it was not made within the ambit of the estate sold, and set the sale aside on that ground. On appeal,—*Held* by the Judicial Committee reversing such decree, first, that as it did not appear that there was any town or village within the pergunnah at which the notification required by the provisions of Bengal Regulation XLV of 1793, s. 12, could be affixed, there had been no irregularity in posting the notice at the house of the judgment-debtor, so as to vitiate the sale; and secondly, that even if there had been an informality in that respect, it ought to have been objected to in the summary suit brought in 1841, and could not be opened eleven years afterwards. LAMB *v.* BEJOY KISHEN DASS . **8 Moore's I. A., 427**

447. ——— *Irregularity in publication of sale—Execution-sale of groups of property under one decree—Irregularity and damage, their necessary relation—Code of Civil Procedure (Act XIV of 1882), ss. 289 and 311.*—The words "on the spot where the property is attached" in s. 289 of the Civil Procedure Code refer to each property attached, and not to a group of separate properties attached under one proceeding or order in one execution case, and therefore when distinct properties are proclaimed for sale in one execution, the omission to affix a copy of the proclamation in each of such properties amounts to an irregularity in the publication of the sale. *Held* also that, where there is no evidence to connect the two elements of irregularity and injury under s. 311, it must appear, before a Court can set aside an execution-sale, that the injury complained of is the reasonable and natural consequence of the irregularity, and attributable to it alone. TRIPURA SUNDARI *v.* DURGA CHURN PAL [**I. L. R., 11 Calc., 74**

448. ——— *Irregularity in publication of sale—Material irregularity—Civil Procedure Code (Act X of 1877), ss. 274, 289, 311*—Under ss. 289 and 274 of the Civil Procedure Code it is necessary that a copy of the sale-proclamation should be affixed to some conspicuous place on the property attached; and the omission to do so is a material irregularity within the meaning of s. 311 of the Code of Civil Procedure. KALYTARA CHOWDHRAIN *v.* RAM COOMAR GOOPTA [**I. L. R., 7 Calc., 466 : 9 C. L. R., 114**

449. ——— *Irregularity in publication of sale—Material irregularities—Civil Procedure Code (Act X of 1877), ss. 287, 289.*—Upon an application to set aside a sale in execution of a decree, on the ground of material irregularities in publishing and conducting it, it appeared that the sale-notification had not been fixed up in the Collector's office as required by s. 289 of Act X of 1877; that no affidavit as to search having been made in the Registry office with regard to incumbrances as required by s. 287 of the Act had been filed; and that the sale took place on, and not after, the thirtieth day from the publication of the notice; but it also appeared that the applicant had himself been present at the sale and had purchased the property, and it was not shown that any substantial injury had resulted from the irregularities. *Held* that there was no ground for setting aside the sale. BANDY ALI *v.* MADHUB CHUNDER NAG [**I. L. R., 8 Calc., 932**

450. ——— *Proclamation of sale—Civil Procedure Code (Act XIV of 1882), ss. 289, 311—Substantial injury.*—A sale of revenue-paying land is not *ipso facto* void by reason of a copy of the sale-proclamation not having been fixed up in the Collector's office as required by s. 289 of the Code of Civil Procedure. An omission so to fix up such notice is an irregularity, the remedy for which can only be by an application under s. 311. NANA KUMAR ROY *v.* GOLAM CHUNDER DEY [**I. L. R., 18 Calc., 422**

451. ——— *Irregularities in publication of sale—Evidence of such irregularities—Affixing proclamation of sale—Nazir's report—Civil Procedure Code (Act X of 1877), ss. 274, 290, 291, and 295—Sale to satisfy judgment-creditor who has not attached.*—The proclamation of sale required by s. 274 of the Civil Procedure Code, to be made at some place adjacent to the property to be sold, and the fixing up of a copy of the order in a conspicuous part of the property, are acts which must precede the posting of the notices in the Court-house as required by s. 290. Three mouzahs were attached in execution of decrees obtained by *A* and *B*. Prior to the sale, *C*, who had also obtained a decree against the owner of the land, applied for leave to execute his decree, in order that he might participate in the sale-proceeds under s. 295 of the Civil Procedure Code. Upon the day fixed for the sale, the Deputy Commissioner was unable, through illness, to attend; and he postponed the sale for three days. Two of the mouzahs were sold,

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—continued

17 SETTING ASIDE SALE—*continued.*

and realized more than enough to satisfy the decrees of *A* and *B* The third was then sold in satisfaction of *C*'s decree Upon an application by the judgment debtor to set aside the sale on the ground of irregularity, it appeared that notice of the sale had been posted in the Court-house more than thirty days before the date fixed for the sale, but had only been published on the properties to be sold five days before that date, that notice of the existence of a mortgage on the properties, but no further particulars, was given, and the mortgagee was allowed to purchase, and that the Deputy Commissioner had accepted the reports of the Nazir and Court peon as to the proclamation of sale, and had refused to allow the judgment debtor to give evidence of its insufficiency *Held* that the proclamation of sale on the property having taken place only five days prior to the date of sale, and the particulars of the mortgage not having

ities. *Held* also that the Deputy Commissioner was not entitled to proceed upon the reports of the Nazir and Court-peon, but was bound to hear the evidence tendered by the judgment debtor, though he was justified, under s 291, in postponing the sale as he had done *Held* further that the third judgment creditor, who had not attached the property, was still entitled to have the sale proceeded with and his decree satisfied under the provisions of s 295 MEGH LALL POOREE v. SHIB PERSHAD MADI

[I. L. R., 7 Calc, 34

S C MEGH LAL POOREE v MOHAMMED DUTT JHA

[8 C. L. R, 369

452. ——— *Irregularity in publication of sale—Civil Procedure Code, ss 274 and 289—Omission to beat drum—Material irregularity*—Omission to have a drum beaten as required by ss 289 and 274 of the Civil Procedure Code (Act XIV of 1882) *held* to be a material irregularity so as to render a sale held in execution of a decree liable to be set aside TRIMBAK RAVJI v. NANA I. L. R, 10 Bom, 504

453. ——— *Irregularity in publishing and conducting a sale—Waiver of*

arrangements they were making for the purpose of paying off the debt, and stating that the decree-holders had attached and advertised the property for sale. That petition being refused, the sale took place; and subsequently the judgment debtors came in and objected to the sale, and asked to have it set aside, on the ground that there had been material irregularity in the publication of the attachment and sale-proclamation, and that consequently they had

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—continued.

17. SETTING ASIDE SALE—*continued*

suffered substantial injury The Subordinate Judge refused to hear evidence on this point, holding that the petition was an admission that the proceedings were in order *Held* that the petition presented prior to the sale did not amount to an admission by the judgment-debtors that the publication and proclamation of the sale had been duly made, and that consequently the Court was bound to hear the evidence tendered by the judgment debtors on that

I A, 230, distinguished THAKOOR MAHATAB DEO v LEELANUND SINGH

[I. L R, 7 Calc, 613 9 C. L R, 398

454 ——— *Irregular publication of proclamation of sale—Sale held too soon after proclamation*—It is a material irregularity for the proclamation to be published less than thirty days prior to a sale in execution of a decree, and where damage has resulted, the sale may be set aside *Megh Lal Pooree* v *Mohammed Dutt Jha, 8 C L R, 369 I L R, 7 Calc, 34,* followed ABDUL NOSSIA v DOOLAL DOSS . 11 C L R., 303

Contra, RAMCHANDAR BAHADUR v KAMTA PRASAD I. L. R, 4 All, 300

455 ——— *Sale held too soon after proclamation—Sale of immoveable property in execution before thirty days from date of fixing up proclamation—Material irregularity in publishing or conducting sale—Civil Procedure Code, 1882, ss 290, 311*—An infringement of the rule contained in s 290 of the Civil Procedure Code

[I. L R., 7 All., 289

456. ——— *Civil Procedure Code, s 306—Delay in making deposit—Adjournment of sale—Absence of substantial injury.*—The commencement of a Court-sale prior to the expiry of the thirtieth day, or any delay in making the deposit required by s 306, or the adjournment of the sale from time to time without sufficient ground, is not more than a mere irregularity and does not vitiate the sale VENKATA v SAMA

[I. L. R, 14 Mad., 227

457. ——— *Civil Procedure Code, 1882, ss 290, 311—Material irregularity—Proof of substantial injury.*—The non compliance with the requirement of s 290 of the Civil Procedure Code that before sales of immoveables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor As to this, the

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN [I. L. R., 21 Calc., 66 L. R., 20 I. A., 176

458. ——— *Civil Procedure Code, s. 311—Material irregularity in publishing or conducting sale—Substantial injury—Notification omitting to state place of sale—Sale held after date advertised—Civil Procedure Code, ss. 287, 290.*—Where a proclamation of sale of immoveable property in execution of a decree omitted to state the place of sale, and where the sale took place on a date other than that notified in the proclamation, and before the expiration of the thirty days required by s. 290 of the Civil Procedure Code,—*Held* that the non-compliance with the provisions of ss. 287 and 290 of the Code was more than mere irregularity, that it must have caused substantial injury, and that the order confirming the sale must be set aside. *Bakhshi Nand Kishore* v. *Malak Chand, I. L. R., 7 All., 289,* referred to. *Per* MAHMOOD, *J.*—*Quære* whether material irregularities such as the above were not in themselves sufficient, within the meaning of the first paragraph of s. 311 of the Code, to justify a Court in setting aside a sale, without inquiring whether such irregularities had resulted in substantial injury within the meaning of the second paragraph. JASODA *v.* MATHURA DAS . I. L. R., 9 All., 511

459. ——— *Civil Procedure Code, 1882, s. 290—Ground for setting aside sale.*—The infringement of the provisions of s. 290 of the Civil Procedure Code is not a mere irregularity, but it vitiates the sale. *Bakhshi Nand Kishore* v. *Malak Chand, I. L. R., 7 All., 289.* SADHUSARAN SINGH *v.* PANCHDEO LAL . I. L. R., 14 Calc., 1

460. ——— *Civil Procedure Code, ss. 290, 311—Sale of immoveable property in execution of decree—Sale held before expiration of thirty days from the proclamation—Application by judgment-debtor to set aside sale—"Illegality"—"Material irregularity"—Proof of substantial injury whether necessary.*—Where a sale of immoveable property in execution of a decree took place before the expiration of the thirty days required by s. 290 of the Civil Procedure Code, and without the consent of the judgment-debtor,—*Held* by EDGE, *C.J.* (BRODHURST, *J.*, dissenting), that the holding of the sale under these circumstances was not merely an irregularity within the meaning of s. 311 of the Code, but was an illegality, and that it was open to the judgment-debtor to object to the sale and to apply to have it set aside, on the ground of such illegality, without proving that he had sustained any substantial injury. *Held* by BRODHURST, *J.*, *contra,* that infringement of the rule contained in s. 290 of the Code does not of itself vitiate a sale in execution of decree, but is a "material irregularity" within the meaning of s. 311,—that expression being wide enough to include illegalities,—and that, before such a sale can be set aside, the judgment-debtor must prove that he has sustained substantial injury by reason of such irregularity. *Olpherts* v. *Mahabir Pershad Singh, L. R., 10 I. A., 25; Megh Lall Pooree* v. *Shib Pershad Madi, I. L. R., 7 Calc., 34; Kalytara Chowdhrain* v. *Ramcoomar Goopta, I. L. R., 7 Calc., 466; Tripura Sundari* v. *Durga Churn Pal, I. L. R., 11 Calc., 74; Bonomali Mozumdar* v. *Woomesh Chunder Bundopadhya, I. L. R., 7 Calc., 730; Bundy Ali* v. *Madhub Chunder Nag, I. L. R., 8 Calc., 932; Nothu* v. *Harbhuj, Weekly Notes, All., 1885, p. 304; Jasoda* v. *Mathura Das, I. L. R., 9 All., 511;* and *Bakhshi Nand Kishore* v. *Malak Chand, I. L. R., 7 All., 289,* referred to. GANGA PRASAD *v.* JAG LAL RAI [I. L. R., 11 All., 333

461. ——— *Proclamation of sale—Sale before hour fixed—Civil Procedure Code (Act XIV of 1882), s. 287—Sale set aside as being no sale.*—A property, advertised for sale under s. 287 of the Code of Civil Procedure, was sold on the day fixed, but at an earlier hour than that stated in the proclamation. *Held* that there had been no sale within the meaning of the Code, proclamation of the time and place of sale and the holding of the sale at such time and place being conditions precedent to the sale being a sale under the Code. BASHARUTULLA *v.* UMA CHURN DUTT [I. L. R., 16 Calc., 794

462. ——— *Property sold before advertised time—Sale invalid.*—A sale by public auction in execution of a decree, which is conducted at a time and place other than those properly notified, is not a sale at all within the meaning of the Civil Procedure Code. The time to be notified for a sale by public auction in execution of a decree must be the time of the commencement of the sale, in order that all intending purchasers may be enabled to be present during the whole of the proceedings, and that all who are interested in the property sold may see that there is a fair competition and a good sale. Where property which was advertised for sale by public auction in execution of a decree at 11 A.M. was sold at 7 A.M.,—*Held* that the mistake was more than a mere irregularity in conducting the sale, and that the whole of the proceedings were invalid. CHEDAMI LAL *v.* AMIR BEG I. L. R., 7 All., 676

463. ——— *Property sold before advertised time.*—Where the fact of an execution-sale having taken place about two hours earlier than the hour announced was alleged to be a material irregularity seriously prejudicial to the interests of the judgment-debtor, it was held to be the bounden duty of the Court to take evidence and determine whether bidders had been prevented from attending, and whether an irregularity of a material kind had occurred. KHODEJA BEBEE *v.* RAM NARAIN DAN [12 W. R., 511

464. ——— *Property not sold at adertised time—Alteration in sale order.*—Where property is advertised to be sold in execution, a change in the specified order of sale or other sudden

alteration of programme, without notice to intending bidders, or the express consent of the judgment-debtor, was an irregularity under s 256, Code of Civil Procedure, 1859, vitiating the sale. POKHRAJ SINGH *v.* GOSSAIN MUNRAJ POOREE [12 W. R, 281

465. ———— *Property not sold at advertised time—Purchase by decree holder at inadequate price*—Where a judgment debtor's property has been sold without further notice on a date subsequent to that originally fixed, and especially when the execution-creditor is the purchaser for a very inadequate value, there is an irregularity which may cause material injury to the debtor. KISHEN PROSSUNNO MOJOMDAR *v.* NURDUMA DOSSEE [17 W. R., 339

466. ———— *Alteration in particulars of property after advertising for sale—Material irregularity.*—The property of a judgment-debtor was proclaimed and advertised for sale in exe-

was released to a third party. Notwithstanding this fact, no fresh proclamation was made, and the sale took place on the day originally fixed. *Held* that the omission to issue a fresh proclamation was a material irregularity, inasmuch as the judgment-debtor was

SINGH . I. L. R, 3 Calc, 544 : 2 C. L. R, 260

467. ———— *Civil Procedure Code, ss 247 and 289—Proclamation—Property broken up into lots—Separate proclamations.*—Where property intended to be sold in execution of a

, though embraced in the same process, are really at such a distance that there is no moral certainty of communication to persons on or interested in the one of what is publicly done on the other, there should, no doubt, be a separate proclamation on each, in order that full intimation may be given of what is to be done. DE PENHA *v.* JALBHOY ARDESHIR SET . . I. L. R., 13 Bom., 368

468. ———— *Adjournment of sale—Notice—Discretion of person selling.*—An auctioneer who sells under a decree has power to adjourn the sale from time to time (upon giving proper notice), but whether he does so or not is a matter in his own discretion. GOVIND HARI VALEKHAR *v.* BANK OF INDIA. BANK OF INDIA *v.* RAGHO NARAYAN . . . 4 Bom., A. C, 164

469. ———— *Adjournment of sale—Notice*—An execution-sale properly notified may be adjourned with the consent of the parties. GOBIND CHUNDER AOOCH *v.* BAMUN DOSS MOOKERJEE . . . . . . 22 W. R., 481

470. ———— *Postponement of sale—Postponement without valid reason—Held*

the postponement But the attention of the Court was called to the importance of abiding by the date fixed in the proclamations of sale as far as possible, and not postponing sales without good reason ASMUTOONNISSA BIBEE *v.* KHUDEMOONNISSA BIBEE [17 W. R., 278

471. ———— *Postponement of sale—Civil Procedure Code, 1859, s 243.*—When property has been put up for sale at auction in execution of a decree, and bids have been *bonâ fide* made for it, the Court is not competent to postpone

private transfer, there being shown no ground to believe that the amount of the judgment-debt would have been thus realized. LUCHMEE NARAIN *v.* BHYROO PERSHAD . . 1 Agra, Mis, 11

472. ———— *Sale, postponement of, for benefit of debtor*—Certain properties were to be sold in execution of decree. As to some, the sale took place as far as possible on the day fixed, but was publicly put off to the next day, when,

[17 W. R., 210

473. ———— *Postponement of sale—Civil Procedure Code, 1859, s 249—Ground*

execution of a decree of land paying revenue to Government should not be granted where it is not alleged that satisfaction of the decree might be made within a reasonable period by a temporary alienation of the land. JAISHEE RAM *v.* BIJAI KOOER [5 N. W., 177

474. ———— *Equitable grounds for setting aside sale—Sale contrary to order for postponement—Mistake*—Where a sale in execution took place under an order obtained notwithstanding a consent on the part of the decree-holder's pleader to a petition by the judgment-debtor for a postponement, the petition so consented to

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

having been by mistake afterwards presented to and filed by the judgment-debtor in the wrong Court, —*Held* that the judgment-debtor was entitled to a decree in a suit brought to have the sale set aside, no title having passed thereby. GANGA PERSHAD SAHU *v.* GOPAL SINGH

[I. L. R., 11 Calc., 136 : L. R., 11 I. A., 234

475. ———— *Postponement of sale—Sale after order postponing sale where order arrives too late to stay sale.*—When a Court executing a decree passes an order postponing a sale, and the sale takes place notwithstanding, in consequence of the order arriving too late, the Court is justified in setting aside the sale on the ground of irregularity, and its order doing so is not appealable. MAIJHA SINGH *v.* JHOW LAL . 6 N. W., 354

476. ———— *Order for postponement made before, but arriving at Collector's office after, sale.*—The High Court passed an order postponing a sale in execution of a decree, which order arrived at the Collector's office the day after the sale. *Held* that the publication of the sale was irregular, as the order of postponement invalidated the notification of sale. NONIDH SINGH *v.* SOHUN KOOER

[4 N. W., 135

477. ———— *Order for postponement arriving after sale had been held—Civil Procedure Code, 1877, ss. 311, 312.*—On the day fixed for the sale of certain immoveable property in the execution of a decree, the Court made an order postponing the sale, but the sale had been effected before such order reached the officer conducting it. The Court, on application having been made to set aside the sale, passed an order confirming it. Subsequently, an application by the decree-holder for a review of this order having been granted, the Court passed an order setting the sale aside as illegal. *Held* that the sanction to the sale originally given having been withdrawn, the sale could not legally be held, and that the sale which was effected, the order of postponement notwithstanding, was unlawful and invalid; and in reviewing its first order and in setting aside the sale as illegal, the Court executing the decree had not acted *ultra vires* and its action was not otherwise illegal. MIAN JAN *v.* MAN SINGH

[I. L. R., 2 All., 686

478. ———— *Sale held after postponement by Court—Order for postponement not reaching the conducting officer—Material irregularity in conducting sale—Civil Procedure Code, s. 311.*—The Court executing a decree passed an order postponing a sale in execution, but the order failed to reach the officer conducting the sale, and the sale was consequently held. The judgment-debtor applied to have the sale set aside as void. *Held* that the effect of the Court's order for postponement of the sale was to deprive the officer of all legal authority to hold it on the date previously fixed; that his not being aware of the order was not material; that the defect in the sale amounted to an illegality and not merely to an irregularity within the meaning of s. 311 of the Civil Procedure Code; that consequently it was not necessary to show that the defect had caused substantial loss to the judgment-debtor; and that the Court could not confirm the illegal sale, but must hold it to be void. *Sukhdeo Rai* v. *Sheo Ghulam, I. L. R., 4 All., 332; Ram Dial* v. *Mahtab Singh, I. L. R., 3 All., 701;* and *Ganga Prasad* v. *Jag Lall Rai, I. L. R., 11 All., 333,* referred to. SANT LAL *v.* UMRAO-UN-NISSA

[I. L. R., 12 All., 96

479. ———— *Code of Civil Procedure (Act XIV of 1882), s. 545—Order passed by Appellate Court for stay of execution—Sale held before communication of such an order.*—An order of an Appellate Court under s. 545, Civil Procedure Code, to stay execution of a decree against which an appeal is pending, is in the nature of a prohibitory order, and as such would only take effect when communicated. If a property is sold before such an order is communicated to the Court holding the sale, such sale is not void and cannot be treated as a nullity. *Foujdar Khan* v. *Bainee Doobey, 3 Agra, 398; Maijha Singh* v. *Jhow Lal, 6 N. W., 354;* and *Mian Jan* v. *Man Singh, I. L. R., 2 All., 686,* distinguished. BISSESWAR CHOWDHURANI *v.* HURRO SUNDAR MOZUMDAR

[1 C. W. N., 226

480. ———— *Postponement of sale—Proclamation of adjourned sale.*—A proclamation of thirty days is necessary when the property is first advertised for sale, not when the sale is postponed for the convenience of the debtor. S. 225 of the Civil Procedure Code, 1859, related to a re-sale, and not to a postponed sale. BUDREE NATH SHUTT *v.* CHUNDER SHEKUR MAN SINGH

[1 W. R., Mis., 3

NOORUL HOSSEIN *v.* OMATOOL FATIMA

[25 W. R., 34

481. ———— *Postponement of sale—Necessity for fresh proclamation.*—Where a sale is postponed, a fresh notice and proclamation ought to issue. SHOSHEE MOOKHEE BURMONYA *v.* DWARKANATH BISWAS . . 6 W. R., Mis., 84

482. ————*Postponement of sale,—Notice—Necessity for fresh proclamation—Act VIII of 1859, s. 249.*—Where a sale in execution of a decree is postponed, whether indefinitely or to a fixed date, it is necessary, in the absence of an express arrangement between all the parties, that a fresh proclamation should be made giving notice of the day to which the sale has been postponed. It may be presumed, when the notice is wanting, that there has been an absence of bidders, from which alone substantial injury must probably have arisen to the judgment-debtor. GOOPEENATH DOBEY *v.* ROY LUCHMEEPUT SINGH . I. L. R., 3 Calc., 542 : 1 C. L. R., 349

OKHOY CHUNDER DUTT *v.* ERSKINE

[3 W. R., Mis., 11

SALE IN EXECUTION OF DECREE —continued.

17 SETTING ASIDE SALE—*continued.*

483. ———————— *Postponement of sale—Sufficient notice of sale—Necessity for fresh notification* —Where a sale was notified to take place on the 8th, and on that day the order for the

FUKEER CHAND 18 W R, 347

484 ———————— *Postponement of sale—Necessity for fresh proclamation* —Where a sale was fixed for the 21st November, but delayed until the 22nd, without any order of postponement, or any fresh proclamation of the day of sale, there is a *primâ facie* case of injury to the party whose property was sold. Such a postponement was in contravention of the provisions of s. 249 of Act VIII of 1859, as, when a sale is postponed, there must be fresh proclamation of the sale and date when it is to take place. SANWUL SINGH *v* MAKHUN PANDEY [2 N. W, 143

485. ———————— *Omission to*

ever, took place on the day originally fixed, but no fresh proclamation was issued, although it was announced previous to the sale that only *A*'s rights and interests would be sold. *Held* that the sale was irregular, as a fresh proclamation ought to have been issued, and an inquiry instituted as to *A*'s share in that *A* was , the sale was 'HOWDHRY *v* C. L. R., 237

486. ———————— *Indefinite post-*

from day to day, and a fresh notice should fix another date for the sale, and where, in consequence of an indefinite postponement, an estate has been purchased for an inadequate price, and especially by the judgment creditor, the irregularity is one that has occasioned substantial injury and justifies a setting aside of the sale. JHOOMUCK CHOWDHRY *v.* RADHA PERSHAD SINGH . 25 W. R., 328

487. ———————— *Civil Procedure Code, 1877, s. 290—"Consent"—Lapse of time between proclamation and actual sale*

cannot be considered such a "consent" as, by virtue of s 290 of Act X of 1877, would do away with the necessity of a proclamation for sale being issued thirty days before the day fixed for sale. Where successive postponements of the day of sale have been made, but the last of these is made by the

that thirty days must elapse between the proclamation and the actual day of sale is requisite. HURBUNS SAHAI *v* BHAIRO PERSHAD SINGH [I. L. R., 5 Calc, 259

S C HURBUNS SAHAI *v* BHAIRSO PERSHAD [4 C L. R., 23

See also BHEKRAJ KOOERI *v* GENDH LALL TEWARI I L R, 5 Calc, 878

488 ———————— *Civil Procedure Code (Act XIV of 1882), s 291—Omission by consent to issue fresh production of sale after adjourn-*

v RAMESHUR MUNDUL . I. L R., 18 Calc, 496

489. ———————— *Agreement as to proclamation on postponement of sale—Civil Procedure Code, 1859, s 249* —An execution-sale, which had been fixed for a certain date, was put off to the corresponding date in the following month on the application of the judgment-debtor, who consented that he would not object to any irregularities affect-

object to it not having been issued. HET NARAIN SINGH *v* GOSSAIN LUCHMEE NARAIN POOREE [23 W. R., 256

JADUB CHUNDER HOLDAR . 3 W. R., Mis., 24

491. ———————— *Sale on close holiday—Irregularity in publication or conduct of sale* —The sale of immoveable property by an Ameen

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

on a close holiday is not illegal, nor is it an irregularity in publishing or conducting the sale. RISRAM MAHTON *v.* SAHIB-UN-NISSA . I. L. R., 3 All., 333

492. ———— *Sale under two separate decrees—Separate sales.*—Where the Court executing two decrees made separate orders directing the sale on the same date of certain immoveable property in execution of such decrees, the officer conducting the sales was not bound to sell such property once for all in execution of both decrees, and his selling such property separately was therefore not an irregularity in the conduct of the sales. COURT OF WARDS *v.* GAYA PRASAD . I. L. R., 2 All., 107

493. ———— *Purchase by decree-holder without permission of Court.*— A sale at which the decree-holder himself, or some other person for him, without the permission of the Court first obtained, becomes the purchaser, is not *ipso facto* void; it is a good sale, unless and until set aside by the Court under the provisions of s. 294 of the Civil Procedure Code, 1877. JAVHERBAI *v.* HARIBHAI [I. L. R., 5 Bom., 575

IN THE MATTER OF VEERAPAH CHETTY [6 B. L. R., Ap., 37 : 14 W. R., 405

494. ———— *Purchase by decree-holder without permission of Court—Civil Procedure Code (Act XIV of 1882), ss. 294, 311—Substantial injury.*—Under the terms of s. 294 of the Civil Procedure Code, it is discretionary with the High Court to set aside an execution-sale at which the decree-holder has bid and purchased without first obtaining permission from the Court so to do; and in dealing with such a case, the Court, although considering the matter as an irregularity in the conduct of the sale, will not interfere with the sale, unless it can be shown that the judgment-debtor has suffered some substantial injury arising from such irregularity. MATHURA DAS *v.* NATHUNI LALL MAHTA [I. L. R., 11 Calc., 731

495. ———— *Civil Procedure Code, 1882, s. 294—Validity or otherwise of sale.*—In a suit in which it was contended that a purchaser at a sale in execution of a decree had, under s. 294 of the Civil Procedure Code, taken nothing by the purchase because he was the holder of the decree in execution of which the property was sold, it was held, following *Javherbai* v. *Haribai, I. L. R., 5 Bom., 575*, that the purchase was not void *ab initio*, but only voidable "on the application of the judgment-debtor or other person interested in the sale." CHINTAMANRAV *v.* VITHABAI [I. L. R., 11 Bom., 588

496. ———— *Civil Procedure Code (Act X of 1877), s. 294, amended by Act XII of 1879—Purchase at a Court-sale on behalf of a judgment-creditor without permission of the Court.*—Under the Civil Procedure Code of 1877, as amended by Act XII of 1879, a purchase made at a Court-sale on behalf of a judgment-creditor was not invalid for want of permission of the Court. That is also the law under Act XIV of 1882; but such a purchase may be set aside by the Court on application under s. 294 as being irregular. PARAMASIVA *v.* KRISHNA . . . I. L. R., 14 Mad., 498

497. ———— *Purchase by judgment-creditor without leave of Court— Remedy of judgment-debtor— Civil Procedure Code (1882), s. 294.*—Where a judgment-debtor without leave of the Court buys the property of his judgment-debtor at a Court-sale, the remedy of the latter is by application under s. 294 of the Civil Procedure Code (Act XIV of 1882), and not by separate suit. GENU *v.* SAKHARAM . . . I. L. R., 22 Bom., 271

498. ———— *Civil Procedure Code (Act XIV of 1882), ss. 294, 311—Application to set aside sale—Leave to bid—Assignee of decree under oral assignment.*—Where the auction-purchaser at a sale in execution of a decree had before the sale merely entered into an agreement with the decree-holder to purchase the decree for a certain sum of money which, however, was not paid till after the sale, and no instrument of assignment of the decree had been executed,—*Held* that the auction-purchaser was not a decree-holder within the meaning of s. 294, Civil Procedure Code. An assignee of a decree under an oral assignment has no *locus standi* at all to apply for the execution of a decree, and it is not necessary for such an assignee to obtain leave to bid at the sale held in execution of a decree. DAKSHINA MOHAN ROY *v.* BASUMATI DEBI [4 C. W. N., 474

499. ———— *Purchase by decree-holder—Refusal of application by judgment-creditor to be permitted to bid at sale—Invalidity of sale—Civil Procedure Code (Act XIV of 1882), s. 294.*—A mortgagee, having obtained a decree declaring his lien on certain property, put up for sale in execution of this decree the mortgaged property. The decree-holder asked for, but was refused, leave to bid at the sale, but, notwithstanding such refusal, purchased the property in the name of a third person. Possession under the sale was opposed, and the decree-holder as purchaser brought a suit for possession of the property. The defendants contended that, inasmuch as the plaintiff (decree-holder) had been refused leave to bid at the sale, his purchase could not be enforced. *Held* that the plaintiff had been guilty of an abuse of the process of the Court in bidding at the sale and buying the property benami, and that the sale therefore ought not to be enforced. MAHOMED GAZEE CHOWDHRY *v.* RAM LALL SEN [I. L. R., 10 Calc., 757

500. ———— *Purchase by decree-holder—Material irregularity—Dissuading purchaser from bidding—Civil Procedure Code (Act X of 1877), s. 311—Leave to bid—Decree-holder related to manager of defendant.*—When liberty is given to a decree-holder to bid at the sale of the judgment-debtor's property, he is bound to exercise the most scrupulous fairness in purchasing that property, and if he or his agent dissuades others

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17. SETTING ASIDE SALE—*continued.*

from purchasing at the sale, that of itself is a sufficient ground why the purchase should be set aside Where a decree-holder was joint in family with the manager of an infant defendant, and the defendant's property was to be sold in execution of the decree,—*Held* that the decree holder ought not to be granted leave to purchase at the sale, because any purchase made by him would be for the benefit of the family

[I. L. R., 7 Calc., 346 : 9 C. L. R., 263

501. ——————— *Purchase by decree-holder—"Material irregularity"—Liberty to bid—Conduct calculated to deter bidders—Civil Procedure Code (Act X of 1877), ss. 294, 311* —The holder of a decree, in execution of which property is sold, is absolutely bound, under s 294 of Act X of 1877, to have express permission from the Court before he can purchase the property, and whether this objection is taken and pressed or otherwise, a sale to him is invalid unless he has got explicit permission The use at a sale of language by an intending bidder in disparagement of the property for the purpose of influencing bystanders, and deterring them from bidding for the property, is a "material irregularity" sufficient to render the sale invalid under s 311 of the same Act RUKHINEE BULLUBH *v.* BROJONATH SIRCAR . I. L. R, 5 Calc, 308

502. ——————— *Disparaging remarks by bystanders or purchasers other than the decree-holder—Notice of sale—Practice regarding sales in execution of decrees—Adjournment of sale—Civil Procedure Code (Act XIV of 1882),*

I. L. R., 7 Calc, 346 9 C. L. R, 263, and *Rukhinee Bullubh* v. *Brojonath Sircar, I L R, 5 Calc, 308,* distinguished. It is the practice of the Courts under the Rules of the High Court, which have the force of law, to place all properties intended for sale in execution of decrees on a list, and to proceed with the sales from day to day, commencing on an appointed day. As each property is taken up in its turn, an adjournment of the sale of a particular property, which is the consequence of such procedure, is not an adjournment within the meaning of s. 291 of the Civil Procedure Code, and it cannot be said in such a case that there was an irregularity in the sale not having been held on the appointed day. LAL MOHUN CHOWDHURI *v* NUNU MOHAMED TALUKDAR [I. L. R., 17 Calc., 152

503. ——————— *Civil Procedure Code (1882), s 311—Position of decree-holder who has obtained leave to bid—Dissuading persons from bidding—Non disclosure amounting to fraud.* —A creditor had obtained a decree on the footing of a mortgage, and in execution brought the property of his judgment-debtor to sale. At the time of sale the decree holder, who had obtained leave to bid, entered into an agreement with *P* to the effect that, if *P* would dissuade other persons from bidding, he (the decree-holder) would purchase the whole property for R83 000 and convey it on certain terms to *P* *P*

1891 for R83,000, which was a little more than half its actual value The sale was confirmed on the 29th June 1891, and the judgment debtor, who at the time of the sale was a minor under the Court of Wards, attained his majority on the 21st April 1894, and filed this petition praying to set aside the sale on the 15th May 1894 *Held* that the omission on the

that therefore the sale must be set aside JAYINILABDIN RAVUTTAN *v.* VIJIA RAGUNADHA AYYARAPPA NAIKAN GOPALAR . I L R., 19 Mad, 315

Held on appeal to the Privy Council —A decree-holder who has obtained leave to bid at a judicial sale is, in regard to restrictions upon him, in the same position as any other purchaser. A charge against a bidder that he and those who have acted in concert

346, though a correct decision on the case, was too

the dissuasion of bidders afforded sufficient ground for making the order. But the High Court had decided, in favour of the petitioner, another point—that there had been material irregularity, within that

fraud upon the Court executing the decree, and entitled the petitioner to have the sale set aside on the ground that in point of law no leave to bid had

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

been granted. *Held* by the Judicial Committee that this ground had not been established by evidence on an issue between the parties having been taken for the first time in the Court of Appeal, with a change of the matter in controversy; and that the fraud on which alone the High Court's order could be sustained had neither been alleged nor proved. MAHOMED MIRA RAVUTHAR *v.* SAVVASI VIJAYA RAGHUNADHA GOPALAR . . I. L. R., 23 Mad., 227 [L. R., 27 I. A., 17 4 C. W. N., 227

504. ———— *Purchase by son of decree-holder—Code of Civil Procedure (Act X of 1877), s. 294.*—A purchase by the son of a decree-holder, undivided in interest from his father, is a purchase by the decree-holder within the meaning of s. 294 of Act X of 1877 as it stood previously to its amendment by Act XII of 1879, and is absolutely void if the purchase were made with funds which were joint property of the father and son. NARAYAN DESHPANDE *v.* ANAJI DESHPANDE [I. L. R., 5 Bom., 130

Since the amendment of the Civil Procedure Code by Act XII of 1879 the sale would not be treated as absolutely void, but as liable to be set aside by the Court on application by the judgment-debtor or other party interested in the sale.

505. ———— *Rejection of highest bid—Abortive sale caused by act of judgment-debtor—Highest bidder declared not the purchaser—Validity of sale.*—Three attempts to sell land taken in execution under a decree had been rendered abortive by the acts of the judgment-debtor, and a delay of seven years occasioned, during which by his conduct he defeated the execution of the decree. When the property was put up for sale for the fourth time, the Collector rejected the two highest bids, on the ground that neither of the bidders could produce a mooktearnamah from the persons for whom respectively they professed to act as agents, nor produce the required deposit, and he declared the third highest bidder the purchaser of the land. *Held* that under the circumstances the conduct of the Collector was justifiable and the sale valid. MOHESH NARAIN SINGH *v.* KISHNANUND MISSER . Marsh., 592 [2 Ind. Jur., O. S., 1: 5 W. R., P. C., 7 9 Moore's I. A., 324

506. ———— *Deposit by purchaser—Purchase by decree-holder.*—At a sale in execution of a decree, when the sale of any lot is completed, the purchaser should then and there be required to make the deposit prescribed by the Civil Procedure Code, failing which the lot should at once be put up to sale at the risk of the first purchaser. The decree-holder, if the lot is knocked down to him, is as much bound to make the prescribed deposit as any other auction-purchaser. CHULKOO DUTT JHA *v.* LEELANUND SINGH W. R., 1864, Mis., 30

507. ———— *Purchase by decree-holder—Payment not in cash, but by giving receipts for amount due to him.*—Where the decree-holder is himself the purchaser at a sale in execution, there is no reason why he should not, instead of paying the price in cash, give receipts for the amount due to him under his decrees, supposing their value is sufficient to cover the amount for which the property is sold. The fact that he does so is not a valid objection to the sale. KHELLAT CHUNDER GHOSE *v.* KESHUB CHUNDER PAUL CHOWDRY [16 W. R., 46

508. ———— *Payment of purchase-money—Civil Procedure Code, 1859, ss. 254, 256, 257—Default in making deposit.*—Directions as to the payment of the purchase-money at sales in execution of decree, arising under s. 254, Act VIII of 1859, were to be dealt with as provided by that section, and did not fall under ss. 256 and 257. A default under s. 254 was not an "irregularity in conducting the sale" under s. 256. BRINDA DEBEE DOSSEE *v.* GOPEE SOONDUREE DOSSIA [6 W. R., Mis., 82

509. ———— *Payment of purchase-money—Civil Procedure Code, 1877, s. 294, and ss. 306, 313—Set-off of purchase-money—Omission to make deposit.*—The requirements of s. 306 of the Civil Procedure Code applying to all cases of sale of immoveable property, under Ch. XIX, a decree-holder buying with permission given under s. 294, and desiring to set off his purchase-money against the amount of the decree, is not exempt from the necessity of making, at the time of sale, a deposit of 25 per cent. on the amount of such purchase-money; and such deposit must be made in cash. The option so to set off the purchase-money cannot be exercised by the purchaser until the confirmation and payment of expenses of the sale. Where, however, all parties interested in the amount to be deposited have waived their right to have that amount deposited in cash, the sale ought not to be set aside on the ground that a cash deposit has not been made. GOPAL SINGH *v.* ROY BUNWAREE LALL SAHOO 5 C. L. R., 181

510. ———— *Payment of purchase-money—Civil Procedure Code, 1877, s. 306—Failure to pay deposit of purchase-money required by that section.*—The person declared to be the purchaser of property put up for sale in execution of a decree did not, as required by s. 306 of the Civil Procedure Code, pay a deposit of 25 per cent. on the amount of his purchase immediately after such declaration, but on a date subsequent to the date on which the property was put up for sale. *Held* that there was no sale at all of the property. INTIZAM ALI KHAN *v.* NARAIN SINGH I. L. R., 5 All., 316

511. ———— *Failure by purchaser to make the deposit required by s. 306 of the Civil Procedure Code—Material irregularity in conducting sale—Civil Procedure Code (Act XIV of 1882), ss. 244, 306, 308, 311, and 312.*—Failure on the part of the person declared to be the purchaser at a sale in execution of a decree to make, and on the

SALE IN EXECUTION OF DECREE
—continued

17 SETTING ASIDE SALE—*continued*

part of the officer conducting the sale to receive, the deposit of 25 per cent on the amount of the purchase-money in the manner required by s 306 of the Code of Civil Procedure, constitutes a material irregularity in conducting the sale which must be inquired into upon an application under s 311, and consequently a separate suit to set aside a sale on such a ground will not lie *Intizam Ali Khan* v *Narain Sing I L R 5 All, 316* dissented from BHIM SING v SARWAN SINGH I. L R, 16 Calc., 33

512 ——— ——— *Inability of purchaser to make deposit—Re-sale—Substantial injury—Civil Procedure Code (Act X of 1877), s 293* —At a sale in execution of a decree the property was knocked down to a bidder at R260 The bidder was unable to make a deposit and the property was immediately put up for sale and re-sold for R50 *Held* that the judgment debtor had sustained such substantial injury as would justify the

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293 of the
difference

between the original bid and the price at which the property was sold BEEPIN CHUNDER SHICKDAR v PURREESHNATH BISWAS I. L R., 9 Calc., 98

S C BEPIN CHUNDER SHICKDAR v MODHOO SUDUN CHOWDHURI 12 C L R, 316

has been sold in execution for a sum sufficient to satisfy the decree the Court is not justified, on

sold should be realized from the defaulter JOY CHUNDER BISWAS v KALI KISHORE DEY SIRCAR [8 C L R., 41

514 ——— *Failure to make deposit—Re sale without notice—Irregular ...*

deposit was not duly made T objected on the 28th March and a fresh sale was ordered by the Court without giving notice to the judgment debtor, and the land was sold for R2 700 on the 13th June.

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the sale of the 13th June and the order which led to it set aside, and that the Court was bound to decide whether the deposit had been duly made by T, or, if not, whether T was liable for any deficiency in the price which might be realized on a re sale KUTPAYYAN v RAMASAMI AYYAN I. L R., 6 Mad, 197

515 ——— *Failure to pay purchase money—Re sale* —At a sale in execution of decree, certain property was knocked down to a bidder, who made default in payment of the purchase money Subsequently the Judge again put the property up for sale, and re sold it at a lower price The decree not being satisfied the Judge put up other property which had been advertised for sale with the property above mentioned, without getting from the defaulter the difference between the price ob-

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[I. L R., 8 Calc, 291. 10 C L R, 236

516 ——— *Failure to pay deposit—Re sale on default in deposit—Civil Procedure Code 1859 s 253* —In a re sale for default under s. 253, Act VIII of 1859 the officer conducting the sale was not bound to commence from the next highest bid below that made by the defaulter instead of commencing the sale *de novo* GOUR MOOKH SINGH v LALLA GOUR SUNKUR [1 W R, Mis, 11

517 ——— *Inadequacy of price* —Smallness of price is not a sufficient ground for setting aside a sale, unless it be the effect of an irregularity in the sale proceedings REET BHUNJUN SINGH v MITTURJEET SINGH 6 W R, Mis, 31

NUDDEA KISHORE DOSS v BUNGSHEE MOHUN DOSS 17 W R., 210

HUBBEBOOL DOSS v ALLENDER HUBBEEOOLA HOSSEIN v LAND MORTGAGE BANK [14 W R., 44

ALIMOODDY CHOWDHRY v CHUNDER NATH SEN [24 W R, 227

518 ——— *Inadequacy of price—Inadequate price produced by mistake—Misstatement in notification* —Where an irregularity in an execution sale (e g, misstatement in the notification) produces a mistake, and the property is consequently sold at an inadequate price, the judgment-debtor is entitled to have the sale reversed KHODEJA BIBEE v JOHAD ROHEEM [14 W R., 320

519 ——— ——— *Civil Procedure Code (1882) s 287—Misrepresentation of value in the proclamation of intended judicial sale—Substantial injury within the meaning of s 311* —The value of property of which the sale has been ordered in execution of a decree when stated in the proclamation of the intended sale, is a material fact within sub s. (e) of s 287 of the Code of Civil Procedure An under-statement of the value of the property having been made in such a proclamation,

SALE IN EXECUTION OF DECREE—*continued.*

17. SETTING ASIDE SALE—*continued.*

which was circulated to mislead bidders, and to prevent them from offering adequate prices, or from bidding at all, and the sale having resulted in a price altogether inadequate,—*Held* that such misstatement was a material irregularity in publishing or conducting the sale, although there might be no rule requiring publication of the value in that proclamation; and that the special remedy provided in s. 311 was applicable, as substantial injury had resulted. SAADATMAND KHAN *v.* PUL KUAR

[I. L. R., 20 All., 412
L. R., 25 I. A., 146
2 C. W. N., 550

520. ——— On a sale of property in execution of a decree, the value stated in the sale proclamation is a material fact within sub-s. (*e*) of s. 287 of the Code of Civil Procedure. Under-valuation of such property is a material irregularity in publishing or conducting the sale. SIVASAMI NAICKER *v.* RATNASAMI NAICKER

[I. L. R., 23 Mad., 568

521. ——— *Inadequacy of price—Material irregularity—Confirmation of sale—Code of Civil Procedure (Act XIV of 1882), ss. 305, 311, and 314.*—The sale of immoveable property to the highest bidder for a price which subsequently appears to be too low is not a material irregularity in publishing or conducting the sale. A decree-holder or a judgment-debtor cannot apply to set aside a sale on the ground of the price realized being too low. Under s. 314 of the Code of Civil Procedure, 1882, the Civil Court cannot, upon or without application, refuse to confirm a sale on the ground that the price bid is too low. LAKSHMI *v.* KRISHNABHAT

[I. L. R., 8 Bom., 424

522. ——— *Inadequacy of price.*—The circumstance that property was sold in execution of a decree below its proper value, and that few persons attended the sale, is not sufficient to vitiate the sale. RUGHOO NATH SINGH *v.* TOODEY SINGH . . . . . 5 N. W., 19

523. ——— *Inadequacy of price—Error in notification—Civil Procedure Code, 1859, ss. 256, 257.*—At a sale held on the 9th September 1872, in execution of a decree, the respondent purchased an estate for R55,000. The notification of sale had stated the Government revenue to be R3,146 instead of R8,146, the sale being fixed for the 5th August 1872. The sale was postponed without the issue of a second notification on an application by the judgment-debtor praying for such postponement, "the attachment and the notification of sale being maintained." On the 1st October 1872 the judgment-debtor objected under s. 256 of Act VIII of 1859 to the sale on the ground of material error in the abovementioned notification in regard to the amount of Government revenue. The Subordinate Judge overruled such objection, but omitted to pass an order under s. 257, confirming the sale. Thereupon the judgment-debtor paid into Court the amount of the decree, and then obtained from the Judge an order purporting to have been made on review under s. 376, but without notice to the respondent, setting aside the sale on the ground of inadequacy of price and the abovementioned material error. Subsequently the Judge refused to confirm the sale and to issue a certificate to the respondent. The High Court, on application by the respondent under 24 & 25 Vict., c. 104, s. 15, held that the objections made were insufficient, and directed the Judge to confirm the sale. *Held* by the Privy Council that, although the alleged inadequacy of price was no ground for refusing to confirm the sale, yet that the above error in specifying the amount of Government revenue was an irregularity (see s. 249) for which, on proof of substantial injury to the judgment-debtor therefrom, the sale might have been set aside; but that the above petition for postponement amounted to an admission by the judgment-debtor that the notification was correct, or that there was no such irregularity as would be likely to mislead. GIRDHARI SINGH *v.* HURDEO NARAIN SINGH

[L. R., 3 I. A., 230 : 26 W. R., 44

Affirming the decision of the High Court in HURDEO NARAIN SAHOO *v.* GIRDHAREE SINGH

[19 W. R., 227

524. ——— *Inadequacy of price—Error in notice of sale.*—Mere inadequacy of price is not a sufficient ground for setting aside a sale in execution if no substantial injury has been caused to judgment-debtor by any material irregularity in publishing and conducting the sale; and the mention of the name of a wrong pergunnah in the notice of sale is not such an irregularity, when the notice has been served in the right mouzah and the estate has been identified. NOORAL HOSSEIN *v.* RAM COOMAR SAHEE . . . . . 25 W. R., 326

525. ——— *Inadequacy of price—Irregularity in publishing or conducting sale.*—If it is proved that the price obtained for property sold at an execution-sale is greatly inadequate, and if it be also proved that there has been a material irregularity in publishing or conducting the sale, the Court will presume that the irregularity was the cause of the inadequacy of price, until proof is given to the contrary. *Gopeenath Dobey* v. *Roy Luchmeeput Singh, I. L. R.*, 3 *Calc.*, 542, approved. KALYTARA CHOWDHARIN *v.* RAMCOOMAR GOOPTA

[I. L. R., 7 Calc., 466 : 9 C. L. R., 114

526. ——— *Material irregularity—Code of Civil Procedure (1882), ss. 291 and 311—Sale at inadequate price owing to hour of sale not being fixed.*—Where a debtor's property under attachment had been ordered to be sold at a fixed date, after the disposal of a certain claim thereto made under s. 278 of the Code of Civil Procedure, but no hour had been fixed for the sale as required by s. 291, and the property was sold at a very inadequate price by reason of the paucity of bidders, —*Held*, affirming the decision of the Subordinate Judge, that there had been material irregularity causing substantial injury to the debtor; and that it

SALE IN EXECUTION OF DECREE —*continued.*

17. SETTING ASIDE SALE—*continued.*

is sufficient under s 311 of the Code, if the evidence, though not "direct evidence," shows that the injury was a necessary result of the irregularity complained of *Tassaduk Rasul Khan* v. *Ahmed Husain, I. L R., 21 Calc, 66 L R, 20 I A, 176,* explained SURNO MOYEE DEBI *v* DAKINA RANJAN SANYAL [I. L. R, 24 Calc., 291

527. ——— *Civil Procedure Code (1882), ss 291 and 311—Material irregularity — Substantial loss — Inadequacy of price —* Where a material irregularity is proved to have occurred in the conduct of a Court sale, and it is shown that the price realized is much below the true value, it may ordinarily be inferred that the low price was a consequence of the irregularity, even though the manner in which the irregularity produced the low price be not definitely made out When a sale is adjourned under s 291, the provisions of that section must be followed with exactitude VENKATA SUBBARAYA CHETTI *v* ZAMINDAR OF KARVETINAGAR . . . I. L. R., 20 Mad., 159

528. ——— *Sale at an inadequate price, through irregularity in sale-proceedings.*—Where six tenures with separate recorded jummas were lumped together and sold in execution of decree as one lot, whereby the plaintiff and his co[illegible] or [illegible] pre[illegible] pre[illegible] the [illegible] he purchased six tenures at an inadequate price, the sale was reversed as fraudulent and illegal SREEKUNT DOSS *v* RAMJEEBUN ROY . 18 W. R, 342

529. ——— *Inadequacy of price—Irregularities indicating suspicions of fraud.*—Where immoveable property of considerable value had been sold for R11 in a sale in execution of a decree for R17-11-0 and purchased *benami* by the execution-creditor in the name of a relative, and it was found that the judgment-debtor had not been informed of the sale,—*Held* that all these circumstances taken together justified a suspicion of fraudulent dealing, and that the judgment debtor was entitled to recover his property on payment of the origina[l] due. GOBIND CHUNDER MOOKERJEE *v.* RAM KOMUL CHATTERJEE . . 25 W. R., 364

530. ——— *Inadequacy of price of property* — The market value of a property is not the value which ought to be taken as the standard at an auction sale in execution of a decree where the purchaser ordinarily gets neither a title nor the title-deeds as in a private sale, but only the right, title, and interest of the judgment-debtor at the time of sale MEAH KHAN *v* NARAIN CHUNDER CHOWDHRY . 18 W. R., 197

531. ——— *Inadequacy of price—Substantial injury—Civil Procedure Code (Act XIV of 1882), s. 311* —The relative cause and effect between a proved material irregularity and inadequacy of price may either be established by direct evidence or be inferred, where such inference is reasonable, from the nature of the irregularity

which must, in the ordinary course of things, lower the value of the property,—*Held* that it might fairly be inferred that the irregularity in the conduct of the sale was the cause of the inadequacy of the price *Macnaghten* v *Mahabir Pershad Singh, I. L R, 9 Calc, 656,* and *Lala Mobaruk Lal* v *Secretary of State for India, I L R, 11 Calc, 200,* referred to. GUR BUKSH LALL *v* JAWAHIR SINGH . . . I. L. R., 20 Calc., 599

(c) SUBSTANTIAL INJURY

532. ——— *Proof of substantial injury—Civil Procedure Code, 1859, s 256* —Even where material irregularity had occurred, as from non issue of proclamation of sale, the party applying to set aside the sale on that ground was bound, under s 256, Act VIII of 1859, to prove that he had sustained substantial injury thereby JOY TARA DOSSEE *v* MAHOMED HOSSEIN [2 W. R, Mis., 2

NILMONEE SHAHA *v* RAM CHURN DEB [6 W. R., Mis, 45

ABOOL MAHOMED *v.* SHIB DOOLAREE TEWAREE [11 W. R., 114

LAEK RAM *v* MOHESH DOSS . 12 W. R., 488

NUJMOODDEEN AHMED *v* ABDOOL AZEEZ [15 W. R., 95

CHUNDER SEKHUR DEB v JADUB CHUNDER SETT [19 W. R., 78

SANWUL SINGH *v.* MAKHUN PANDEY [2 N. W., 143

SHEO PROKASH MISSER *v* HURDAI NARAIN [22 W. R., 550

This now forms an express enactment in the Code

533. ——— *Presumption as to irregularity and injury—Civil Procedure Code (Act XIV of 1882), s 311* —Where an application is made to set aside a sale in execution of a decree

[illegible] *Pershad Singh, I L R, 9 Calc, 656,* and *Lala Mobaruk Lal v. Secretary of State for India in Council, I. L R, 11 Calc, 200,* discussed SATISH CHUNDER RAI CHOWDHURI *v* THOMAS [I. L. R., 11 Calc, 658

SALE IN EXECUTION OF DECREE
—continued.

17. SETTING ASIDE SALE—*continued.*

534. ——————— *Presumption as to irregularity and injury—Civil Procedure Code (Act X of 1877), s. 311—Witnesses, Laches in summoning.*—On an application under s. 311 of the Civil Procedure Code (Act X of 1877) to set aside a sale, it appeared that there had been a material irregularity in publishing the sale; but no witnesses were called to prove that substantial injury had been caused thereby. It also appeared that, seventeen days after the applicant had applied for proclamation to be issued to his witnesses, he deposited the requisite fees; and that subsequently there was a delay of seven days in the office in issuing such proclamations, which were ultimately issued only three days prior to the day fixed for the hearing. On the applicant alleging that, in consequence of such delay, he had not been allowed a fair opportunity to produce his witnesses,—*Held* that the Court cannot presume that substantial injury has been caused from the mere fact of there having been a material irregularity in publishing a sale; but when both a material irregularity and substantial injury have been proved, the Court may reasonably presume that the substantial injury is due to such irregularity. *Held* also that the applicant, having been guilty of laches himself, could not be allowed to set up the delay in the office as a ground for the non-production of his witnesses. *Gopee Nath Dobay* v. *Roy Luchmeeput Singh, I. L. R., 3 Calc., 542,* considered. BONOMALI MOZUMDAR *v.* WOOMESH CHUNDER BUNDOPADHYA
[I. L. R., 7 Calc., 730 : 9 C. L. R., 341

535. ——————— *Civil Procedure Code, s. 311—Alleged irregularity attending sale in execution—Failure to prove substantial injury resulting.*—A judgment-debtor having allowed the execution-sale of immoveables to be completed without objecting on the ground afterwards alleged by him, *viz.,* insufficiency of description within the requirements of s. 287, he having been throughout aware of what the description was, the sale is not invalid on this ground alone without more. No evidence having been given in the Court executing the decree of substantial injury having resulted by reason of such irregularity, *i.e.,* the alleged misdescription,—*Held* that, although the Appellate Court below had assumed that the property had been sold for less than it ought to have fetched, such substantial injury as inadequacy of price should have been proved to have occurred in order to bring the case within s. 311. *Macnaghten* v. *Mahabir Pershad Singh, I. L. R., 9 Calc., 656,* referred to and followed. ARUNACHELLAM *v.* ARUNACHELLAM . . I. L. R., 12 Mad., 19

536. ——————— *Civil Procedure Code (1882), ss. 290 and 311—Material irregularity—Proof of substantial injury.*—The non-compliance with the requirement of s. 290 of the Civil Procedure Code that before sales of immoveables in execution of decree thirty days should intervene between proclamation and sale, is a material irregularity within the meaning of s. 311. But its effect is not to make the sale a nullity without proof of substantial injury thereby to the judgment-debtor. As to this, the latter section requires affirmative evidence. TASADDUK RASUL KHAN *v.* AHMAD HUSAIN . . . . I. L. R., 21 Calc., 66
[L. R., 20 I. A., 176

537. ——————— *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Proof of substantial injury.*—It is not sufficient for an applicant under s. 311 of the Code of Civil Procedure to show that there has been material irregularity in publishing or conducting a sale, and that a price below the market value has been realized; but he must go on to connect the one with the other, that is, the loss with the irregularity as effect and cause, by means of direct evidence. *Tassaduk Rasul Khan* v. *Ahmad Husain, I. L. R., 21 Calc., 66,* referred to. JAGAN NATH *v.* MAKUND PRASAD
[I. L. R., 18 All., 37

538. ——————— *Civil Procedure Code (1882), s. 311—Application to set aside sale in execution—Proof of substantial injury.*—*Held* that in an application under s. 311 of the Code of Civil Procedure to set aside a sale in execution of a decree, it is necessary for the applicant to show not only that there has been a material irregularity in publishing or conducting the sale, but also that substantial injury had been sustained in consequence of such material irregularity. *Arunachellam* v. *Arunachellam, I. L. R., 12 Mad., 19,* and *Tasadduk Rasul Khan* v. *Ahmed Husain, I. L. R., 21 Calc., 66,* referred to. SHIRIN BEGAM *v.* AGHA ALI KHAN . . . . I. L. R., 18 All., 141

See also SURNOMOYEE DEBI *v.* DAKINA RANJAN SANYAL . . . I. L. R., 24 Calc., 291

and VENKATA SABBARAYA CHETTI *v.* ZAMINDAR OF KAROETINAGAR . I. L. R., 20 Mad., 159

(*d*) EXPENSES OF SALE.

539. ——————— **Liability for expenses of sale**—*Sale set aside for irregularity.*—Where an execution-sale was set aside, on the ground of irregularity on the part of the Ameen and other officials,—*Held* that the judgment-debtor was not chargeable with the expenses of such sale. HULSE *v.* LUCHMUN DASS . . . . . . 1 Agra, Mis., 1

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS.

(*a*) COMPENSATION.

540. ——————— **Right to compensation for improvements on ejectment**—*Act XI of 1855, s. 2.*—A purchaser at a Sheriff's sale was not entitled to compensation under Act XI of 1855, s. 2, for improvements to the land during his occupation if he had relied solely on the bill of sale. BHOYRUBNATH KHETTRY *v.* DOYALCHUNDER LAHA
[Bourke, O. C., 159

SALE IN EXECUTION OF DECREE —*continued*

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued*

541 ——— *Bona fide purchaser—Inquiry as to title—Act XI of 1855*—A person did not become a *bonâ fide* purchaser within the meaning of Act XI of 1855, unless he had made all reasonable enquiries as to the title. Enquiries from neighbours were not sufficient. When therefore a purchaser who had bought property on no further information than he could obtain from neighbours was ejected by one who showed a better title—*Held* that he was not entitled to compensation under Act XI of 1855. GOUR GOPAL DUTT *v.* BISSONATH GHOSE. Cor, 41

(*b*) RECOVERY OF PURCHASE MONEY

542 ——— Right to refund of purchase money—*Mode of recovery—Civil Procedure Code 1859 s 258*—Under s 258, Act VIII of 1859, when a sale of immoveable property is set aside, the purchaser is entitled to recover back his purchase money. If the Court, reversing the sale, omit to make such order the purchaser can sue to recover the money from the person who has received it. GREESH CHUNDER POTTAR *v.* LOOKHOODA MOYEE DABEE. 1 W R, 55

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA. 2 Agra, 50

543 ——— *Civil Procedure Code, 1859, s 258*—When a sale of immoveable property in execution of a decree was set aside by a competent Court, the right of the purchaser to

[illegible]

decree. BROJENDUR ROY CHOWDHRY *v.* JUGURNATH ROY. 6 W R, 147

[illegible]

LALL MITTER. Marsh, 183

S C ROY MOHUN LALL MITTER *v.* CHOOLUN SINGH. 1 Hay, 438

545 ——— *Civil Procedure Code (Act VIII of 1852), ss 310A, 315—Applica-*

[illegible] was brought

to sale and the purchase money was paid into the Madras City Civil Court. The sale was set aside under Civil Procedure Code, s 310A. Part of the purchase money was attached in execution of subsequent decree passed against the same defendant by the Small Cause Court, and was remitted to that Court under the attachment. On an application by the purchaser for the refund of the purchase money by the various persons who had received portions thereof—*Held* that the City Civil Court had jurisdiction to entertain the application. VIRASAMI CHETTI *v.* LILADHARA VYASS. [I L R, 21 Mad, 398

546 ——— *Sale set aside for want of interest of debtor in the property*—When a sale is set aside by reason of the execution-debtor having no interest in the property sold the purchaser of such property is entitled to receive back his purchase money as on a consideration that has failed. BANK OF HINDUSTAN CHINA AND JAPAN *v.* PREMCHAND RAICHAND. AHMEDBHAI HABIBHAI *v.* PREMCHAND RAICHAND. 5 Bom, O C, 83

Contra, KRISHNAPA VALAD SANTU *v.* PANCHAPA VALAD GURUPADAPA. 6 Bom., A C, 258

KALU BIN VISAJI *v.* DAMODHAR GOBIND. [9 Bom, 92

MAHOMED BASIRULLA *v.* ABDULLA. [4 B L R, Ap, 35: 15 W R, 196 note

547 ——— *Proportionate share of purchase money on portion of sale being set aside*—Where the plaintiff purchased at an auction sale under a decree the rights and interests of a person and his minor brother in certain property and the decree was subsequently set aside as far as it concerned the minor brother's share,—*Held* that the purchaser was entitled to a refund of a proportionate

[illegible] it a decree for [illegible] decree holder [illegible] proper decree

[illegible] [3 N W, 67

DOOLHIN HUR NATH KOONWEREE *v.* BAIJOO OOJHA. 2 Agra, 50

548 ——— *Want of interest*

[illegible]

terest at all or less than was supposed was no ground for setting aside the sale or refunding the purchase money. RAJIB LOCHUN *v.* BIMALAMONI DASI. 2 B L R, A C, 82

S C RAJEEB LOCHUN SAWUNT *v.* MOHESSUREE DOSSEE. 10 W. R, 365

SALE IN EXECUTION OF DECREE
—continued.

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—continued.

549. —— Suit to recover purchase-money—Want of interest of debtor—Warranty of title—Liability of Sheriff and execution-creditor—Civil Procedure Code, 1859, s. 258—Irregularity in sale-proceedings.—A purchaser of property, whether immoveable or moveable, at a sale in execution of a decree under the Code of Civil Procedure, 1859, held in accordance with the provisions of that Code, had no right to recover his purchase-money, though it might turn out that the right, title, and interest of the execution-debtor was nothing at all, unless the sale itself be set aside, and the sale would not be set aside by reason merely of the defect or absence of title in the thing sold on the part of the execution-debtor; but if there was an express assertion that the goods sold were the property of the execution-debtor, the Sheriff and the execution-creditor were bound by such warranty, to the extent, at least, that one of them, in whose hands the purchase-money was, was bound to restore it to the purchaser, if the purchaser had not got that for which he paid. S. 258 of Act VIII of 1859 applied wherever a sale was set aside, whether for irregularity in publishing or conducting a sale or for other grounds; and though the right of the purchaser to recover back his purchase-money, in case of the sale being set aside, was, by that Act, given expressly only where the sale was of immoveable property, yet the same consequence would follow where a sale of moveable property in execution had been set aside. Where therefore certain shares were attached by the execution-creditor and were as the property of the execution-debtor, and the afterwards sold in execution by the Sheriff, and the Sheriff's proclamation of sale contained assertions of interest of the execution-debtor in these shares, whereas he had no such interest,—*Held* that the purchaser at the execution-sale was entitled to have the sale set aside, and his purchase-money returned to him; but the Sheriff's liability to the purchaser in such a case ceased so soon as he had paid over the proceeds of the sale to the execution-creditor, and the purchaser's remedy thereafter was against the execution-creditor only. *Bank of Hindustan* v. *Premchand Raichand*, 5 *Bom., O. C.*, 83, commented upon. FRAMJI BESANJI DASTUR *v.* HORMASJI PESTANJI

[I. L. R., 2 Bom., 258

550. —— Suit to recover purchase-money when judgment-debtor had no interest—Act VIII of 1859, ss. 257, 258.—Where an auction-purchaser at a sale in execution of a decree bought the right, title, and interest of the judgment-debtor in the property sold in execution, and it was subsequently found that the judgment-debtor had no right, title, or interest whatever in the property, it was held that no suit would lie against the decree-holder or the judgment-debtor to recover back the money which the auction-purchaser had paid. Although a purchaser might, under s. 258 of Act VIII of 1859, recover his purchase-money, it was only when the sale was set aside for irregularity under s. 257. SOWDAMINI CHOWDHRAIN *v.* KRISHNA KISHOR PODDAR

[4 B. L. R., F. B., 11: 12 W. R., F. B., 8

See also RAJIBLOCHUN *v.* BIMALAMONI DASI

[2 B. L. R., A. C., 82

551. —— Suit for refund of purchase-money for property bought at auction sale in execution of decree—Uncancelled sale.—The plaintiff purchased at an auction-sale, in execution of a decree, the right, title, and interest of a judgment-debtor in certain property. The sale was confirmed on November 30, 1866. On proceeding to take possession, he was opposed by the defendant, who asserted that he was in possession of the property, and that it was his. In a suit under s. 258, Act VIII of 1859, for a refund of the purchase-money, the sale still remaining uncancelled,—*Held* that the suit must be dismissed; that s. 258 of Act VIII of 1859 only applied to cases where the auction-sale had been cancelled; that the proper course for the plaintiff to have pursued was to have brought a suit under s. 269 of Act VIII of 1859 for a declaration of the judgment-debtor's right, title, and interest in the property. BISSESWAR PANDAY *v.* BHAGWAN DAS

[3 B. L. R., A. C., 301: 12 W. R., 176

552. —— Want of interest in debtor—Civil Procedure Code, 1882, ss. 313, 315—Purchase of property where debtor has no saleable interest.—Under s. 313 of the Code of Civil Procedure, a purchaser at a sale in execution of a decree may resist the confirmation of the sale and prevent its conclusion, while under s. 315 he may apply, after the confirmation of the sale, for refund of the purchase-money on the ground that nothing passed by the sale. To entitle a purchaser, under paragraph 2 of s. 315 of the Code of Civil Procedure, to a refund of purchase-money, it is not necessary that a Court should have decided in other proceedings that the judgment-debtor had no saleable interest in the property which purported to be sold or that the purchaser should have obtained actual possession and have been deprived thereof. SIVARAMA *v.* RAMA . . . . I. L. R., 8 Mad., 99

553. —— Suit by purchaser for purchase-money—Civil Procedure Code 1882, ss. 313, 315—Debtor without saleable interest—Per STRAIGHT, OLDFIELD, and TYRRELL, JJ.—That the words in s. 315 of the Civil Procedure Code, "no saleable interest," mean "nothing to sell," and are not intended to confine the cases in which a purchaser at an execution-sale shall be entitled to receive back his purchase-money, or to those in which the judgment-debtor, though having an interest, such interest is, by prohibition of law or for some other reason, unsaleable. *Held* by the Full Bench that a purchaser at a sale in execution of a decree can maintain a suit against the decree-holder for recovery of his purchase-money, when it is found that the judgment-debtor had no saleable interest in the property sold,

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued*

and he is not limited to the special procedure in the execution department mentioned in s 315 MUNNA SINGH v GAJADHAR SINGH I. L R, 5 All, 577

554. ———— *Purchaser de-*

plication IN THE MATTER OF THE PETITION OF MULO . . I L R., 2 All., 299

Contra, HIRA LAL v. KARIMUNNISSA [I. L R., 2 All., 780

555. ———— *Collusion with*

cation, except as to a sum of R50, which represented the alleged value of the judgment debtor's interest in the land brought to sale by the decree-holder *Held* that, as the judgment debtor was found to have no interest in the land, the purchaser was entitled to a refund of the money paid to the decree holder KUNHI MOIDIN v. TARAYIL MOIDIN [I. L. R., 8 Mad., 101

556.———— *Civil Procedure Code, 1877, s. 315—Suit to recover purchase money where debtor is found to have no interest.*—A purchaser at an auction sale of property found subsequently in a suit to which the decree-holder was a party to belong to a third party, is entitled to recover back his purchase money under s 315 of the Civil Procedure Code, on the ground that the judgment debtor had no saleable interest in the property sold. BENODE BEHARI NUNDI v. MOHESH CHUNDER GHOSE . . . . 12 C. L. R., 331

557. ———— *Suit to recover purchase money—Civil Procedure Code, ss 313, 315—Want of saleable interest—Order confirming sale, Effect of, on suit*—P bought certain land at a sale in execution of a decree. Before the purchase-money was paid, P applied to the Court by petition to set aside the sale, and returned the deposit money on the ground that the judgment-debtor had no saleable interest in the land. The Court rejected the petition and confirmed the sale on the 15th March 1881. The sale was subsequently set aside by a decree obtained by V in a suit against P and the

judgment creditor P then sued the judgment-
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bringing this suit PACHAYAPPAN v NARAYANA [I. L R., 11 Mad., 269

558.———— *Civil Procedure*

tent to him to proceed by way of a regular suit against the person into whose hands such price has come as such person's rateable share of the assets of the judgment debtor, under s. 295 of the Code of Civil Procedure He is not limited to the procedure in the execution department mentioned in s 315 of the said Code *Munna Singh v Gajadhar Singh, I L. R, 5 All., 577*, followed KISHUN LALL v MUHAMMAD SAFDAR ALI KHAN [I. L. R, 13 All., 383

559 ———— *Suit by the*

of the defendant, but was subsequently evicted by the son of the judgment debtor He then sued in 1889 to recover the purchase money paid by him, on

by the plaintiff possessed no legal interest therein. NILAKANTA v IMAMSAHIB I. L. R., 16 Mad., 361

560. ———— *Recovery of purchase money—Portion of the property sold belonging to a stranger—Civil Procedure Code (1882), ss 313, 315, and 316—Rights of purchaser —Warranty of title.*—Where a Court-sale in execution of a decree is not vitiated by fraud, the only extent to which the purchaser can claim relief is that indicated by s. 315 of the Civil Procedure Code. The effect of ss. 313, 315, and 316 of the Code is that the right, title, and interest of the judgment-debtor passes to the purchaser at a Court-sale, subject, however, to the condition that the purchaser may

SALE IN EXECUTION OF DECREE
—*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

recover back his purchase-money when he finds that the judgment-debtor has no saleable interest at all. The implied warranty of title in respect of sales by private contract cannot be extended to Court-sales except so far as such extension is justified by the processual law in India, *viz.*, by s. 315 of the Civil Procedure Code. *Dorab Ally Khan* v. *Abdool Azeez, L. R., 5 I. A., 116,* followed. SUNDARA GOPALAN *v.* VENKATA VARADA AYYANGAR

[I. L. R., 17 Mad., 228

561. ———— *Return of purchase-money when judgment-debtor found to have no saleable interest in property sold—Procedure for finding the fact of his having no interest—Notice to judgment-creditor—Parties—Civil Procedure Code, ss. 313, 315, and 622—Superintendent of High Court.*—One *V* obtained a decree against *A*, and in execution sold certain land which was purchased by *E*, who got a certificate of sale, and obtained possession. Subsequently the land was claimed by one *B*, who sued *A*, the judgment-debtor, and *E*, the auction-purchaser, to set aside the sale and establish his title to the land. He succeeded in his suit, and in execution got possession of the land. Thereupon *E* (the auction-purchaser) applied, under s. 315 of the Civil Procedure Code (XIV of 1882), for a refund of his purchase money, and the Subordinate Judge made an order directing *V*, the decree-holder, to repay it. *V* contended that he ought not to have been ordered to refund the money without having an opportunity of proving that the property had been properly sold in execution of his decree against *A*, and that, as he had not been made a party to *B*'s suit, he had had no opportunity of doing this. On application to the High Court,—*Held* that the order of the Subordinate Judge for the restitution of the purchase-money was wrong. S. 315 provides that the purchase-money paid at an execution-sale is to be returned when it is found that the judgment-debtor has no saleable interest in the property sold. It does not prescribe how the fact *is to be ascertained,* but the conclusion from s. 313 as well as from general principles is that it must be a finding on some proceedings to which the judgment-creditor was a party, or at any rate of which he had notice. In the present case there was no finding on which the Subordinate Judge could base his order for the restitution of the purchase-money. VITHOBA *v.* ESAT . . . . I. L. R., 18 Bom., 594

562. ———— *Sale set aside—Suit by auction-purchaser to recover purchase-money—Civil Procedure Codes (Act VIII of 1859), ss. 256, 257, 258; (X of 1877), ss. 312, 315—Warranty—Caveat emptor.*—Certain immoveable property was attached and proclaimed for sale in the execution of a decree on the application of the decree-holder, *H*, as the property of his judgment-debtor. *W* objected to the attachment and sale of such property on the ground that it did not belong to the judgment-debtor, but was endowed property. His objections were disallowed, and the property was put up for sale on the 20th July 1875 under the provisions of Act VIII of 1859, and was purchased by *K*. *W* subsequently sued *K* to establish his claim to the property and to have the sale set aside, and on the 18th August 1876 obtained a decree setting it aside. Thereupon *K* sued *H* to recover the purchase-money, alleging a failure of consideration. *Held* that the sale not having been set aside in favour of the judgment-debtor on the ground of want of jurisdiction or other illegality or irregularity affecting the sale, but having been set aside in favour of a third party who had established his title to the property, and there being no question of fraud or misrepresentation on the part of the decree-holder, the suit was not maintainable. *Rajib Lochun* v. *Bimalamoni Dasi, 2 B. L. R., A. C., 82;* and *Sowdamini Chowdhrain* v. *Krishna Kishor Poddar, 4 B. L. R., F. B., 11,* followed. *Makundi Lal* v. *Kaunsila, I. L. R., 1 All., 568; Neelkunth Sahee* v. *Asmun Matho, 3 N. W., 67;* and *Doolhin Hur Nath Koonweree* v. *Baijoo Oojha, 2 Agra, 50,* distinguished. *Held* also that the auction-purchaser could not have applied under s. 315 of Act X of 1877 for the return of the purchase-money, as the provisions of that section could not have retrospective effect, and would not apply to a sale which had taken place before that Act came into operation. *In the matter of the petition of Mulo, I. L. R., 2 All., 299,* dissented from. *Per* STRAIGHT, J.—That, had the provisions of that section been applicable, instead of instituting a suit, the auction-purchaser should have applied for the return of her purchase-money in the execution of the decree. HIRA LAL *v.* KARIM-UN-NISA

[I. L. R., 2 All., 780

563. ———— *Sale by Sheriff under writ of fieri facias—Sale subsequently declared invalid—Suit to recover purchase-money—Liability of execution-creditor—Civil Procedure Code, 1859, ss. 201, 242.*—The plaint in a suit by *A* against *B* stated that, in a suit in which *B* had recovered judgment against *C*, a writ of *fi. fa.* was, on 18th June 1866, issued on the application of *B*, directing the Sheriff of Calcutta to levy the judgment-debt by seizure, and, if necessary, by sale, of the property of *C* in Bengal, Behar, and Orissa, or in any other districts which were then annexed or made subject to the Presidency of Fort William in Bengal; that the writ did not authorize the execution thereof against immoveable property in Oudh; that under the writ the Sheriff, acting under instructions from *B*, seized and put up for sale the right, title, and interest of *C* in a talukh in Oudh, which was purchased by *D*, to whom the Sheriff executed a bill of sale, and on receipt of the purchase-money paid a portion thereof to *B* and the balance to *C*, and put *D* into possession of the property, and he remained for some time in possession and in receipt of the rents and profits; that eventually in proceedings in Oudh instituted by *D* for partition of the property purchased by him, the sale was pronounced to be null and void and was set aside, and *D* was removed from

SALE IN EXECUTION OF DECREE —*continued.*

18 SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

possession, and that the plaintiff sued as the executor of *D* to recover the whole of the purchase-money from *B*. *Held* on appeal, affirming the decision of PHEAR, *J*, that the plaint disclosed no cause of action, first, because a purchaser who, after the execution of the conveyance, is evicted by a title to which the

accordingly could not maintain the action in its present shape, *viz*, for money had and received The judgment of the High Court in *Bissessur Lall Sahoo* v. *Ramtuhul Singh*, 11 B L R, 121, explained by PHEAR, *J*, and ss 201 and 242 of Act VIII of 1859 observed upon DORAB ALLY KHAN *v.* MOHEEOODDEEN

[I. L. R., 1 Calc, 55 : 24 W. R., 372

jurisdiction, and to pass the debtor's title to it with-

within his jurisdiction, and he stands in the same position as an ordinary person who has sold that which he had no title to sell Since there is not in

is governed by the law relating to chattels, rather than by that relating to the sale of real estate. A Sheriff, who in his official capacity seizes and sells property, undertakes by his conduct that he has legal authority to do so. When, from his having acted beyond the territorial jurisdiction of the Court whose officer he is, the sale becomes inoperative and ineffectual, the purchaser may have a case for relief as against the judgment-creditor who has received the *purchase money, if it should appear that the Sheriff* has acted under his authority and by his express directions. DORAB ALLY KHAN *v.* EXECUTORS OF MOHEEOODDEEN . . I. L. R., 3 Calc, 806

S. C DORAB ALLY KHAN *v.* ABDOOL AZEEZ

[L. R., 5 I. A, 116 : 2 C. L. R, 529

564. ——————— *Payments of purchase money on an agreement as to possession between purchaser and execution creditor — Sale subsequently set aside—Suit for purchase-money—Accord and satisfaction.*—On the 9th of October 1866 the Sheriff of Calcutta executed a bill of sale to *A* of

a certain talukh situated in Oudh, of which *A* afterwards obtained possession In consequence of an impression that the sale was illegal, *A* directed the Sheriff not to pay the money to *B*, the execution-creditor, and the money remained in the hands of the Sheriff *until the 24th of October* 1867, when *A* directed the payment of the money to *B* in consequence of an arrangement then come to between *A* and *B* to the effect that, if *A* should be ousted from the possession of the property within a year, *B* should take measures to reinstate him at his (*B's*) expense. *A* died without heirs in July 1868, and the Government of Oudh, not being aware that *A* had left a will took possession of the talukh partly as *on an escheat and partly because there were arrears* of revenue due on the property On the 2nd of

was done in April 1869 In a suit brought by *A's* executors against *B* in September 1872 to recover the purchase money as money had and received, as upon a total failure of consideration,—*Held* that the agreement of the 24th of October 1867 operated as an accord and satisfaction of all rights which *A* might have had to a return of the purchase money or to damages, and that the only remedy which *A* had was an action on the agreement *Held* also that no breach of the agreement of 24th of October 1867 had in fact occurred, and that, even if the *agreement had been broken, the suit was barred by* limitation. DORAB ALLY KHAN *v* ABDOOL AZEEZ. ABDOOL AZEEZ *v* DORAB ALLY KHAN

[I. L. R., 6 Calc, 356

565. ——————— *Purchase of surplus proceeds of revenue sale afterwards set aside —Suit to recover purchase money—Voluntary payment*—An estate of which *R* was one of the registered shareholders was sold for arrears of revenue, and the amount realized, after deducting the arrears and the expenses of the sale, remained in deposit with the Collector *S*, the holder of a decree against *R*, notwithstanding objections made by *R*, caused the interest of *R* in the surplus proceeds in the hands of the Collector to be attached and sold in execution of his decree At the execution sale *R's* interest was bought by *B* and from the money paid by him the judgment-debt of *S* and the debts of other judgment creditors of *R* were satisfied. In the meanwhile *R* brought a suit to set aside the revenue sale of the estate, and obtained a decree in his favour in the High Court. *B* then applied to the Collector for *R's* share of the surplus proceeds,

[illegible]

L. R., 2 I. A., 131

SALE IN EXECUTION OF DECREE —*continued.*

18. SETTING ASIDE SALE—RIGHTS OF PURCHASERS—*continued.*

Reversing the judgment of the High Court in BISSESSUR LALL SAHOO *v.* RAM TUHUL SINGH [11 B. L. R., 121 : 19 W. R., 351

566. ———— *Suit to recover purchase-money when sale is set aside—Minor—Costs—Fraud.*—A decree-holder fraudulently caused the sale in execution of his decree of certain immoveable property belonging to a minor. The minor brought a suit for a declaration that such sale was invalid and obtained possession of the property from the auction-purchaser. The auction-purchaser sued the decree-holder to recover his purchase-money and the costs incurred by him in defending the suit brought by the minor. *Held per* PEARSON, TURNER, SPANKIE, and OLDFIELD, *JJ.*, it being found that the auction-purchaser was not a party to, or cognizant of, the fraud on the part of the decree-holder, that neither the mere fact that the auction-purchaser knew that he was purchasing the property of a minor, nor the mere fact that he did not ascertain whether or not the sale was justified by the terms of the decree, disentitled him to recover the purchase-money from the decree-holder. *Held* also that, being innocent of fraud and having purchased in the *bonâ fide* belief that the property of the minor was saleable, he was entitled to recover the purchase-money. *Kelly* v. *Gobind Das, 6 N. W., 168,* distinguished. *Held* also that he could not recover the costs incurred by him in defending the suit brought by the minor, being a suit he ought not to have defended. *Per* STUART, *C.J.*—That the auction-purchaser, being guilty of fraud, was not entitled to recover the purchase-money, and, assuming that he was innocent of fraud, that, having purchased with the knowledge that the property was the property of a minor and without ascertaining that the sale was justified by the terms of the decree, he could not recover the purchase-money. MAKUNDI LALL *v.* KAUNSILA . . . I. L. R., 1 All., 568

567. ———— *Decree passed without jurisdiction—Suit to recover possession of lands sold in execution.*—The plaintiff sued to establish his right to, and to recover certain lands in, the possession of which he had been obstructed by the defendant. The plaintiff purchased the lands at a sale held in execution of a decree obtained against the first and second defendants in the Court of the District Munsif of Tripassore. The sale was directed by the District Munsif of Tripassore. Between the date of the decree and the sale, the village in which the lands were situated was transferred from the jurisdiction of the District Munsif of Tripassore to the District Munsif of Conjeveram. *Held* that the sale was a nullity and conferred no title upon the plaintiff, but that the plaintiff was entitled to recover from the first and second defendants the amount of the purchase-money paid by him. NARAYANA SAWMY NAICK *v.* SARAVANA MUDALY 6 Mad., 58

568. ———— *Civil Procedure Code, 1859, ss. 256, 258—Right on sale being set aside for irregularity—Right to recover money expended for benefit of indigo factory.*—When a sale is set aside under Act VIII of 1859, s. 256, where the purchaser had, before the sale was confirmed, taken possession, laid out money, and received rents or profits, and he is turned out some time after by reason of such reversal of sale, he should get back the money laid out by him for the benefit of the estate in addition to his purchase-money and interest thereon, and should account to the judgment-debtor for the profits received by him. At the same time it would depend upon the circumstances under which the purchaser took possession, and the nature of his outlay, whether he ought in equity to be allowed to claim reimbursement of the money expended by him. Where a purchaser *bonâ fide* took possession of the property, and from time to time laid out money thereon, because he thought that otherwise from its peculiar nature it would become even worse than valueless (*e.g.*, making advances in an indigo concern lest the opportunity of the season should pass away), it was held that he was entitled to have it made a condition of setting aside the sale that he be repaid so much of the outlay as he could show was beneficial to the estate; he accounting for the rents and profits realized by him. MORGAN *v.* ABDOOL HYE [23 W. R., 393

Confirming order setting aside sale. ABDOOL HYE *v.* MACRAE . . . . . 23 W. R., 1

569. ———— *Suit by purchaser for interest on purchase-money—Act VIII of 1859—Act X of 1877, s. 315.*—A judgment-debtor, whose property had been sold in execution of a decree under Act VIII of 1859, appealed from the order disallowing his application to set aside the sale, after Act X of 1877 (Civil Procedure Code) came into force. The Appellate Court set aside the sale. The purchaser sued the decree-holder for interest on the purchase-money and the expenses of the sale, the purchase-money having been returned to him, under the order of the Court executing the decree, without interest and less such expenses. *Held* by the Full Bench that the provisions of Act X of 1877, and not of Act VIII of 1859, were applicable to the determination of the matter in dispute in the suit. *Held* by the Divisional Bench (STRAIGHT and TYRRELL, *JJ.*) that, with reference to the ruling of the Full Bench, the suit was maintainable. *Held* also by the Divisional Bench that, under the circumstances of the case, the plaintiff ought not to be granted the relief sought. RAGHUBAR DAYAL *v.* BANK OF UPPER INDIA . I. L. R., 5 All., 364

SALE OF GOODS.

See CASES UNDER CONTRACT.

See CONTRACT ACT, s. 73. [15 B. L. R., 276

See CONTRACT ACT, s. 78. [I. L. R., 4 Calc., 801
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SALE OF GOODS—*continued*

See LIEN . I. L. R., 18 Calc., 573
[L. R., 18 I. A., 78

See PRINCIPAL AND AGENT—COMMISSION AGENTS . I. L. R., 16 Mad., 238
[I. L. R., 17 Bom., 520
I. L. R., 20 Mad., 97

See SHIPMENTS . 5 B. L. R., 619

———— Agreement for—

See STAMP ACT, 1879, SCH. I, ART. 46
[I. L. R., 14 Bom., 102

See STAMP ACT 1879 SCH. II, ART. 2
[I. L. R., 10 Mad., 27
I. L. R., 15 Mad., 150

————Note or memorandum of—

See STAMP ACT, 1879, SCH. I, ART. 46
[I. L. R., 14 Bom., 102

—*Bom. Act of Bombay* —In August , of Bombay, ordered from *B, R & Co.*, in London, 100 bales of grey shirtings at 7s 10d per piece f. o. b., November-December shipment. In order to carry out this order, *B, R & Co.* purchased goods of the

against this or any of these shipments," and the letter addressed by *D & Co.* to *B, R & Co.* forwarding draft contained the following clause: "It is understood that the proceeds of the goods are to be remitted to be held by you specifically for the protection of the enclosed bill, or any other of your

accordingly despatched the 100 bales to Liverpool, and there *B, R & Co.* had them shipped in eight different vessels, *viz.*, 13 bales in each of the four steamers *Nubia, Clan Drummond, Inchulva,* and *Roumania*, and 12 bales in each of the ships *Hispania, Eden Hall, City of Edinburgh,* and *Wistow Hall.*
B, R.
made
B, R & Co. paid the freight at Liverpool and effected insurance on the plaintiffs' behalf. All the shipments were made before the 1st December 1890, except the 12 bales by the *Wistow Hall*, which were shipped on that day. On the several shipments being affected, *B, R & Co.* accepted bills of *D & Co.*, payable three months after date. The bills of lading of the bales shipped in the *Nubia, Clan Drummond,* and *Hispania* were endorsed in blank by *B, R & Co.*, and sent by post to *B, A & Co.*, of Bombay. The *Nubia* arrived at Bombay in November, and the plaintiffs received the 13 bales shipped by her, *B, A & Co.* having endorsed the bill of lading to the plaintiffs. No specific payment was made by the plaintiffs in respect of these bales, but at that time they had a sum standing to their credit in the books of *B, A & Co.* The invoices of 25 more bales, *viz.* 13 bales *ex Clan Drummond* and 12 bales *ex Hispania*, arrived in Bombay later in November, and were handed to the plaintiffs. On the 1st December 1890 the plaintiffs paid R25,000 to *B, A & Co.* Neither the *Clan Drummond* nor the *Hispania* had then arrived in Bombay. On the 4th December 1890 *B, R & Co.* suspended payment, and on that day a receiving order was made vesting their assets in the first defendant *W*, and on the next day *P* was appointed special manager of the estate under s. 12 of the English Bankruptcy Act (Stat. 46 & 47 Vict., c. 52). At that time the bills of lading for the remaining 62 bales were still with *B, R & Co.*, who then handed them over to *P*. On the same 5th December 1890 *B, A & Co.* suspended payment in Bombay. On the 13th December 1890 *D & Co.* telegraphed to their agents in Bombay, *R. S & Co.*, directing them to stop the goods in transit, including

the 12 bales on board that vessel. Previously to that notice, however, the bales had been landed in the dock at Bombay. They then gave the dock authorities notices, but at that time the ships' agents had already given the plaintiffs a delivery order for the goods. On the same day, *viz.*, the 15th December, *R. S & Co.* gave notice to the agents of the *Clan Drummond* to stop the 13 bales on board. These bales had not then been landed, and were then still on board. The other five steamers with the remaining 62 bales duly arrived in Bombay and went into dock.

Held, (1) on the evidence, that the payment of the R25,000 by the plaintiffs to *B, A & Co.* in Bombay was a payment for and on account of the 100 bales. In respect of transactions before bankruptcy, a payment to *B, A & Co.* was a payment to *B, R & Co.*, but if that were not so, *B, A & Co.* were agents to receive payment. (2) That on the goods being shipped at Liverpool, if not at an earlier date, the property in them passed from *D & Co.* to *B, R*

SALE OF GOODS—*concluded.*

& Co., and from the latter, by reason of the plaintiffs' contract with *B, R & Co.*, to the plaintiffs,—*B, R & Co.* having, by holding the bills of lading, the constructive possessions of the goods and the legal right to their actual possession, and to retain the same until their price was paid by the plaintiffs were entitled, as charges. (3) That the plaintiffs against the representatives of *B, R & Co.* and *B, A & Co.* in bankruptcy, to the bills of lading and the goods represented by them without further payment. *R, S & Co.*, as agents of the Official Receiver, had not therefore the right to withhold the bills of lading of any of these bales from the plaintiffs. (4) On the evidence, that when *D & Co.* forwarded the goods to *B, R & Co.* at Liverpool, they really started the goods on their voyage to Bombay, and that the transit lasted until the bales were "at home" in Bombay. Until then the right of *D & Co.* to stop the goods in transit lasted. (5) That effectual notice on behalf of *D & Co.* to stop in transit was given in respect of the 13 bales *ex Roumania* by the notice sent by *R, S & Co.* on the 15th December 1890. The general notice given on that day to the agents of the *Roumania* not only as to specific bales, but as to any other bales shipped on account of *G* and *R D* to *B, A & Co.*, although indefinite, covered the shipment by the *Roumania*, and was given in time to prevent the bales on board that ship from reaching "home." (6) That effectual notice by *R, S & Co.* on behalf of *D & Co.* to stop in transit was given in respect of the 13 bales *ex Inchulra* and the 3 bales (out of the 12) *ex Eden Hall* which were still on board and undischarged at the date of the notice of the 2nd January 1891. (7) As to the 12 bales *ex Hispania* landed prior to the notice of the 15th December and as to the 12 bales *ex City of Edinburgh* and the 9 (out of the 12) *ex Eden Hall* landed before the notice of the 2nd January 1891, and as to the 12 *ex Wistow Hall*, in respect of which no notice at all was given, that the plaintiffs were entitled to them. (8) That the goods ceased to be in transit when landed in dock in Bombay. LILLADHAR JAIRAM NARRANJI *v.* WREFORD . I. L. R., 17 Bom., 62

SALE-PROCEEDS.

See APPEAL—EXECUTION OF DECREE—PARTIES TO SUITS.
[B. L. R., Sup. Vol., 13, 927

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE.

See SALE FOR ARREARS OF REVENUE—SALE-PROCEEDS.

——— Distribution of—

See CASES UNDER SALE IN EXECUTION OF DECREE—DISTRIBUTION OF SALE-PROCEEDS.

——— Right of Government to—

See PAUPER SUIT—SUITS.
[I. L. R., 1 All., 596

SALE-PROCEEDS—*concluded.*

——— Suit for refund of—

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . W. R., F. B., 180
[I. L. R., 12 All., 546

——— Suit to recover surplus —

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 18 Calc., 234

See LIMITATION ACT, 1877, ART. 62.
[I. L. R., 18 Calc., 234

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 20 Calc., 51

See LIMITATION ACT, 1877, ART. 145.
[I. L. R., 18 Calc., 234

See MORTGAGE—POWER OF SALE.
[I. L. R., 16 Bom., 141

——— Taking out of Court—

See LIMITATION ACT, 1877, ART. 179—STEP IN AID OF EXECUTION—SUIT AND OTHER PROCEEDINGS BY DECREE-HOLDERS.
[6 W. R., Mis., 49
15 W. R., 182
I. L. R., 6 All., 366
I. L. R., 10 Calc., 549
I. L. R., 17 Mad., 165
I. L. R., 22 Bom., 340

SALSETTE.

——— Law applicable in—*Christian inhabitants of the Island of Salsette—Converts from Hinduism to Christianity—Succession to property before Succession Act—Primogeniture—Hindu law, how far applicable—Manager of family—Mortgage by manager when binding on family property—Suit for redemption of mortgage—Sale in execution of decree—Purchaser, Rights of—Power of Christian inhabitant of Salsette to make a will dealing with his share in ancestral property.*—The law of a conquered territory continues in force until altered by the Crown or the Legislature. The Island of Salsette was conquered from the Marathas by the British in 1774, and the law of succession for the Christian inhabitants of the island remained unaltered until the passing of the Indian Succession Act (X of 1865). Until that Act was passed, the law of primogeniture was not in force among the Christian inhabitants of Salsette. In the absence of a widow and daughter, the sons took the property of their father in equal shares. *Quære*—Whether they did so under the Hindu law or the Portuguese law, or by force of usage existing among them. A mortgage of certain property was made in 1875 by the eldest of three brothers *P, M*, and *E*, who were Christian inhabitants of the Island of Salsette. They had inherited the property from their father, who died in 1840. The family had originally been a Hindu family, but had been converted to Christianity. *E* died in 1876, and *M* died in 1883, bequeathing his interest in the property to his nephew, the plaintiff, who was

SALSETTE—*concluded*

P's son. In that year (1883) the mortgagee sued *P* alone upon the mortgage and obtained a decree wh ch he afterwards assigned to the defendant who sold the mortgaged property in executi n of the decree, and at the sale purchased the property himself The plaintiff now sued to redeem the property and the question arose (1) whether, under the law applicable to Christian inhabitants of Salsette the eldest bro

perty of the family *Held* (1) that the law of primogeniture prior to the passing of the Indian Succession Act (X of 1865) did not exist among the Christian inhabitants of Salsette and that *P*, although eldest son had not succeeded to the whole of the family property He and his brothers took equal shares in the property of their father (2) That the mortgage by *P* had been authorized by the family and was for family purposes, and was binding upon the family property Although *P* and his brothers could not be regarded as co parceners under Hindu law, yet having regard to the fact that they were

the decree upon the mortgage was the whole interest in the mortgaged property The defendant purchased that interest, subject to the right of the plaintiff to show that his share derived from *M* was not bound by the mortgage and he had failed to do so. *M*'s share as well as *P*'s had passed by the sale (4) A member of the Christian community of the Island of Salsette is entitled to deal with his share in ancestral property by will. JALBHAI ARDESHIR SHET *v* MANOEL . . . I. L. R, 19 Bom, 680

SALT

———Search for contraband—

See ESCAPE FROM CUSTODY
[I. L. R., 19 *Mad.*, 310

SALT, ACTS AND REGULATIONS RELATING TO—

	Col.
1. BENGAL . .	8381
2. MADRAS . .	8383
3 BOMBAY .	8384

1 BENGAL

1. ——— Beng Reg X of 1819, s 36—*Possession of salt—Arrangement by Government*—The absence of a protective document makes salt contraband. But where the Government has made such an arrangement with a particular party as places him in possession of a large quantity of salt,

SALT, ACTS AND REGULATIONS RELATING TO—*continued*

1 BENGAL—*continued.*

the element and condition which give a Salt officer the jurisdiction to seize salt in the absence of a protective document are wanting KOOMARNARAIN ROY *v* SUPERINTENDENT OF SALT CHOWKEY, JULLESSUR [1 Hay, 247

2 ——— Beng Act VII of 1864, ss 12 and 16—*Confiscation of salt found without rowana or pass—Intention to sell*—If salt exceeding five seers is found within the limits prescribed by s. 12 of Bengal Act VII of 1864 unprotected by a rowana or pass, the salt is contraband and liable to seizure, and the parties transporting it are punishable under s 16 It matters not whether any attempt or intention to sell is proved or not QUEEN *v* OFATULLA 6 B L R, 381

S C GOVERNMENT OF BENGAL *v* AKATOOLLAH [15 W R, Cr, 21

3 ——— s 16—*Rowana Endorse-*

show-
ventive
S 16
of Act VII only gives power to fine when the salt is not specified in a rowana IN THE MATTER OF THE PETITION OF KISHORY MOHUN PRAMANICK [23 W. R, Cr, 6

4 ——— *Salt carried partly by land and partly by water*—Where a person who had taken a quantity of salt under a rowana for trans
ney
voye
was, and was conveying the rest in two separate batches by land, it was held that he could not be convicted under Bengal Act VII of 1864, s 16 QUEEN *v* CHUNDER CHURN DASS [22 W R., Cr, 71

5. ss 16 and 18—*Possession of contraband salt*—In a case of conviction under s 16, Bengal Act VII of 1864, for having in possession contraband salt, the Sessions Judge recommended that it should be set aside on the ground that the salt had already reached its destination, and was not *en route* s 18 consequently not applying The High Court set aside the conviction accordingly QUEEN *v* CHUNDRO MOHUN BHOOYA [22 W. R., Cr., 82

6 ——— ss 16 and 21—*Possession and sale of salt*—*A* was convicted under s 16, Bengal Act VII of 1864, and *B* under s 21 of the same Act, the former with having had in his possession salt not covered by a rowana, and the latter with having sold to *A* the said salt. *Held* that the conviction of *A* under s. 16 was illegal, the salt in his possession having been a portion of salt for which *B* had taken out a rowana, but that the conviction of *B* under s. 21 was proper, as he had failed to certify the salt sold by him to *A* on the back

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

1. BENGAL—*concluded.*

of the rowana. IN THE MATTER OF THE PETITION OF BHAGBUT DEY . . 18 W. R., Cr., 64

7.——— s. 17—*Infliction of penalty on owner and servant.*—In a case of conviction, under Act VII of 1864, of having in possession contraband salt, the penalty cannot be inflicted on the owner of the salt and also on the servant or gomashta of the owner who has the salt in his possession, as the possession of the latter is the possession of the former. IN THE MATTER OF THE PETITION OF GUNGADHUR SAHOO . 22 W. R., Cr., 9

8. ——— s. 18 — *Confiscation of salt—Power of releasing from confiscation.*—By s. 18, Bengal Act VII of 1864, salt, not being conveyed by the route and to the place prescribed in the rowana, becomes absolutely confiscated. The power of releasing any such salt is vested in the Board of Revenue under s. 39, and not in the Magistrate. QUEEN *v.* BOIDONATH [7 W. R., Cr., 48

9.——— *Conviction of both principal and agent.*—The High Court in this case upheld the conviction by the Magistrate, under Bengal Act VII of 1864, s. 18, both of the owner of contraband salt and of his agent who was transporting the salt, and declined to direct the Magistrate to pass sentence on the manjees of the boat in which the salt was being transported when seized, their boat having been already confiscated by the Magistrate. QUEEN *v.* MODUN MOHUN PAL CHOWDHRY . . . . . 23 W. R., Cr., 7

2. MADRAS.

10. ——— Act XVII of 1840—*Possession of salt-earth.*—Being in possession of salt-earth, from which salt may be manufactured, with the object of making salt, is an offence under the salt laws. ANONYMOUS . 4 Mad., Ap., 53

11. ——— Mad. Reg. I of 1805, s. 18 —"*Spontaneous salt,*" *Possession of—Salt Excise Act, 1871.*—"Spontaneous salt" is salt which, produced naturally, requires no process of manufacture to render it suitable for human consumption. To collect spontaneous salt for domestic consumption, or to be found in possession of it for that purpose, or to be found in the act of conveying it home from the place in which it is collected, are not, *per se*, acts prohibited by Regulation I of 1805, s. 18. *Semble*—In districts to which the Salt Excise Act, 1871, is extended, to obtain or to be found in possession of spontaneous salt under circumstances which show an intention to evade payment of the excise is an offence. ANONYMOUS [I. L. R., 3 Mad., 17

12. ——— *Salt-earth, Collection of or possession of.*—The collecting of salt-earth from salt-swamps, or the being in possession of alt-earth for the purpose of making salt, is not an

SALT, ACTS AND REGULATIONS RELATING TO—*continued.*

2. MADRAS—*concluded.*

offence within the meaning of s. 18 of Madras Regulation I of 1805. REG. *v.* PYLA ATCHI [I. L. R., 1 Mad., 278

13. ——— Mad. Act I of 1882, s. 26—*Possession of salt-earth.*—The possession of earth impregnated with salt, not being a natural saline efflorescence or deposit, is no offence under s. 26 of the Salt Laws Amendment Act, 1882 (Madras). QUEEN *v.* THUNJI . . I. L. R., 7 Mad., 163

14.——— cl. 3; s. 27 (e)—*Salt imported from foreign State, Contraband.*—S. 26 of the Salt Laws Amendment Act (Madras Act I of 1882) makes it penal to import salt by any route not legally sanctioned for that purpose, and also to possess salt known to have been imported in contravention of the salt laws; and s. 27 of the said Act authorizes, *inter alià*, the Governor in Council to make rules for regulating the import of salt by land. No such rules having been passed in 1884, P was convicted of being in possession of salt known to have been manufactured in, and imported from, the Native State of Pudukottai. *Held* that the conviction was right. QUEEN-EMPRESS *v.* PODIATHAL . . . . I. L. R., 8 Mad., 342

3. BOMBAY.

15.——— Acts XXVII of 1837 and XXXI of 1850—*Maxim "Omnia præsumuntur contra spoliatorem"—Salt thrown overboard to avoid measurement—Salt removed in excess of permit.*—Applying the maxim "Omnia præsumuntur contra spoliatorem," the High Court held that, where a vessel was seized on suspicion of having a greater quantity of salt on board than was allowed by its permit, and immediately afterwards a number of men boarded the boat, and with the assistance of the agent of the owner threw a considerable quantity of salt overboard, a presumption arose that there was an excess of salt on board at the time of the seizure beyond the amount allowed by the permit. Where under a permit to pass a certain number of maunds of salt on which duty has been paid, an amount in excess of such number is removed, the whole of such salt must be considered as removed contrary to the provisions of the Salt Acts (Act XXVII of 1837 and Act XXXI of 1850); and the whole of such salt, and not merely the excess, is under these Acts liable to confiscation. FRAMJI HORMASJI *v.* COMMISSIONER OF CUSTOMS . . . . 7 Bom., A. C., 89

16. ——— *Removal of salt—Property in salt naturally formed—Theft.*—Dishonest removal of salt naturally formed in a creek, which was under the supervision of an officer belonging to the Customs Department, constitutes theft, the salt having been legally appropriated by such officer. (*Per* BAYLEY and WEST, *JJ.*) But removal for one's own use from a creek, of such salt not legally appropriated, constitutes no offence either under the Penal Code or Act XXXI of 1850 or XXVII of 1837, though under s. 7 of the latter Ac

SALT, ACTS AND REGULATIONS RELATING TO—*continued*

3 BOMBAY—*continued.*

made applicable by s 8 of the former, the salt removed becomes liable to detention (*Per* Lloyd and Kemball, *JJ*) Reg v. Mansang Bhavsang [10 Bom, 74

17. ——— Bom. Act VII of 1873—*Act XVIII of 1877—Duty paid under former Act—Effect of new Act by which duty increased coming into operation before removal of salt—Increased duty paid under protest—Suit to recover excess—Set-off—Excise duty—Customs*—Prior to the 28th December 1877, the excise duty on salt manufactured in Bombay was R1-13 0 per maund, and the Act which regulated the importation and transport of salt in the Presidency of Bombay was the Bombay Salt Act (VII of 1873) The plaintiffs, who were salt merchants, were desirous of exporting salt from the salt works at Uran and Panvel, and accordingly, under the provisions of Act VII of 1873, made four several applications in writing to the Assistant Collector of Salt Revenue for the

tions the duty payable in respect of the amount of salt therein mentioned was paid Receipts for the duty so paid were given to the plaintiffs, and all four applications were duly registered before the 28th December 1877 The salt comprised in the first three

last applicati
consisted of
On the 28th
came into for
manufactured in Bombay was raised from R1-13 0 to R2 8-0 per maund, and on that day the sarkarkun refused to allow the plaintiffs to remove the balance of the first three lots (*viz*, 2,748 maunds) or the last lot of maunds 10 483, unless an additional duty, at the rate of eleven annas per maund, was paid in respect thereof alleging that the same was leviable under Act XVIII of 1877 The plaintiffs paid under protest the additional duty demanded, amounting to R9,096-5 0, and exported the salt to British Malabar,

The plaintiffs subsequently brought this suit to recover the said sum of R9 096 5 0, together with a sum of R1,000 damages alleged to have been sustained by reason of the delay in removing the salt caused by the conduct of the sarkarkun The plaintiffs contended that, having paid the duty in respect of the salt comprised in the four applications and the said duty having been received by the Collector before

SALT, ACTS AND REGULATIONS RELATING TO—*concluded*

3 BOMBAY—*concluded.*

Act XVIII came into force, they were not liable to pay any further duty, and that Act XVIII of 1877 did not apply to the said salt The defendant contended that the additional duty was rightly levied on the salt, and further claimed to set off against the plaintiffs claims the sum of R9 056 5-0 which the plaintiffs would have been obliged to pay in importing the salt into British Malabar if they had not already paid it to the authorities in Bombay but from payment of which they had been exempted on production of the certificates above mentioned *Held* that on the 28th December 1877 the plaintiffs had acquired the right to remove the salt, whenever they might think proper, by simply complying with the *usual forms required by Act VII of 1873, and that* Act XVIII of 1877 did not operate retrospectively so as to destroy that right and to impose on the plaintiffs a heavier burden as a condition of their removing the salt *Held* also however, that, as the salt was allowed to pass free into British Malabar on the strength of its having already paid the duty of R2 8 0 per maund at Bombay the sum of R9 096 5-0 must be deemed to have been appropriated by the plaintiffs to the payment of the customs duty payable on the importation of the salt into the ports of

them at the Malabar ports, and claiming, in virtue of such certificates that the salt should be admitted

to the use of the plaintiff) to the payment of the enhanced customs duties at such ports Brito v Secretary of State for India
[I. L R., 6 Bom., 251

SALT ACT.

———Breach of—

See Sentence—Imprisonment—Imprisonment in Default of Fine.
[I. L. R., 4 Mad., 335, 335 note
5 Bom., Cr., 61

SALT ACT (XII OF 1882)

——— s 11—*Limitation prescribed for charging with offence—Fraud in concealing date of offence*—The provisions of s 18 of the Limitation Act of 1877 do not apply to criminal cases, and the peremptory terms of s 11 of the Indian Salt Act (XII of 1882) are not affected by that section. Queen-Empress v. Nageshappa Pai
[I. L R., 20 Bom, 543

SALT PANS, LEASE OF—

See Stamp Act, sch II, art 13.
[I. L. R., 18 Bom, 546

SALVAGE

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY. [I. L. R., 14 All., 273

——— — **Consolidation of claims for—**

See PRACTICE—CIVIL CASES—ADMIRALTY COURT I. L. R., 22 Calc., 511 [3 C. W. N., 67

——— **Lien for—**

See LIEN . I. L. R., 2 Calc., 58

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—SALVAGE 9 W. R., 252

1. ——— **Principles of salvage lien**—*Right to salvage.*—A claim to salvage is founded on a principle of equity which the Courts of British India are bound to recognize. It accrues irrespectively of the circumstance that the rescue is from a danger incurred on inland waters, or of the circumstance that a portion of the services may be rendered from the shore. A boat laden with indigo seed left Permit Ghat, about three miles above the pontoon bridge over the Ganges at Cawnpore, on the morning of the 6th of August. While the boatmen were endeavouring to cross the stream, the boat struck the bridge at a point where the current was running with a velocity of 530 feet per minute. The boat came athwart two of the pontoons, and by the pressure of the stream canted over on its side. From this cause, and also from the strain and other injuries, it began to take in water. Had it been allowed to remain in this position, the bridge must have broken from its moorings, or, more probably still, the boat and cargo would have been submerged. The persons in charge of the bridge might have at once obviated all danger to the bridge by submerging the boat. They took measures to relieve the strain on the bridge and to remove the cargo. It was impossible to remove the boat until the whole of the cargo had been discharged. This was done, and the boat was towed to a place of safety, and the cargo was removed and stored in a warehouse. *Held* that a right to salvage accrued. Persons in these provinces, to whom a right of salvage has accrued, are entitled to retain the property saved until a reasonable sum has been paid or tendered to them in satisfaction of their claim. GILMORE *v.* ROSS . 6 N. W., 311

2. ——— **Services entitling vessel to salvage**—*Towage.*—Where a ship is in a condition of actual peril, and the services of a tug are sought for and directed to the purpose of releasing her from that condition, such services are salvage services. But where there is nothing in these services as regards risk or exertion or other conduct of the salvors to make them differ from ordinary towage services, their reward should be estimated as for towage with salvage liberality. IN THE MATTER OF THE "ALABAMA" . 2 Ind. Jur., N. S., 130

3. ——— [illegible] ordinary [illegible] of master and crew [illegible]. The S.S. C, while [illegible] as a [illegible] transport to convey troops and stores from Bombay to Egypt, broke her screw shaft and became disabled. While in that condition, the S.S. *H B* met her and towed her back to Bombay, the voyage occupying eleven days. The owners of the S.S. *C* settled the claim of the owners of the S.S. *H B* for R37,500, but refused to recognize any separate claim to remuneration to the plaintiffs, the master and crew of the S.S. *H B*. *Held* that the services rendered were, under all the circumstances of the case, salvage and not merely towage services, and that R10,000 was a fair remuneration for the master and crew of the salving vessel to be apportioned, R4,000 to the master, the rest to the crew according to their ratings. The plaintiffs held entitled also to one thirty-second part of the freight, if any, which might be recovered by the S.S. C under her charter party with the Indian Government. If towage leads to the rescue of a vessel in actual danger, or in reasonable apprehension of danger, the services should be remunerated as salvage. When the steam power of the salving vessel is the efficient cause of the salvage, the owners are entitled to the larger share of the reward. This is especially the case where the master and crew of the salving vessel incur no risk to life. But the reward of the latter ought nevertheless, in the interests of commerce and humanity alike, to be on a liberal scale. The rule no longer obtains which made the salvage reward proportionate to the value of the salved ship. The Courts are only bound to give such amount as is fit and proper with reference to all the circumstances of the case, including value. RAFFIN *v.* S.S. "CHILKA" I. L. R., 7 Bom., 130

4. ——— **Calculation of salvage award**—*Steamers.*—The Court is bound to consider the time, labour, skill, enterprise, and risk of the salvors, as well as the value of the property engaged in the service; and also the degree of danger from which the property is rescued, and the value of the property so rescued. Steamboats are entitled to a higher rate of reward than other vessels by reason of the promptness with which they are enabled to render services in such cases. IN THE MATTER OF THE "LADY JOCELYN" . 2 Mad., 355

5. ——— [illegible] *during squall.*—A dinghee laden with gilders valued at R2,[illegible] was being propelled across the river when a squall coming on and the dinghee being in some danger, the gilders were taken on board a flat for safety, and kept there till the squall subsided. *Held* that the owners of the flat had a claim for salvage, and that R15[illegible] was a fair remuneration for services rendered. UMA CHURN CHATTERJEE *v.* [illegible] [1 Hyde, 212

6. ——— [illegible] *salvage services*—[illegible] In an action of salvage [illegible] which a ship was attached, and the bail [illegible] [illegible] THACKERAY, *J.*, held that [illegible] [illegible] [illegible] to [illegible]

SALVAGE—*continued.*

which In

[I. L. R., 17 Calc., 84

7. ——— *Amount of salvage awarded—Mode of estimating salvage services—Allocation of salvage amongst officers and crew—Bail—Costs.*—On the 13th August 1893 the S S *Cashmere*, being (as found by the Court) in a position of risk and hazard, which by a change in the weather might have at once become one of danger, was in need of assistance which the *Nasers* afforded her The services, however, rendered by the *Nasers* were not of an extraordinary or protracted character The owners of the *Nasers* sued claiming R1,00,000 for salvage services, and the master and crew of the *Nasers* filed a second suit claiming R50,000 The defendant ship paid into Court R6,000 for the owners of the *Nasers* in the first suit and R2,257 for the crew in the second suit The value of the S S *Cashmere* was R78,000, and that of the cargo on board was R56,510 *Held* that the amount paid into Court by the defendant ship ... *Held* ... portion ... b) allo- ...) costs, ... STEAM

[I. L. R., 24 Bom., 55

8. ——— *Service to a vessel in distress, though not in imminent danger—Interruption of service by accident—Towage service convertible into salvage service—Distinction between towage and salvage service—The indicia of salvage service—Costs—Practice of the Court in giving costs*—Any service rendered to a vessel in a state of peril or risk or otherwise in distress, which ...

... or has received substantial injury. In considering the question whether the service was of the nature of salvage service, the risks of navigation, the difficulty under which it was performed, and the danger in performing it have all to be taken into consideration. An ordinary towage service may, in consequence of ...

SALVAGE—*concluded.*

not disentitle the salvors from their reward In ...

the work was performed. The shortness of service may often be ... and labour ... consolidated ... ant, and no order is made giving the conduct of both to one plaintiff, the promovents are entitled to separate costs Practice of the Court followed, and costs given on the ordinary scale provided for in the rules under the Civil Procedure Code, and not under the schedule relating to Vice-Admiralty actions IN THE MATTER OF THE STEAMSHIP "DRACHENFELS." "RETRIEVER" *v* "DRACHENFELS" "HUGHLI" *v.* "DRACHENFELS" I. L. R., 27 Calc., 860

SALVATION ARMY.

——— Obstruction of street by—

See MADRAS POLICE ACT, 1888, s 71.
[I. L. R., 14 Mad., 223

SANAD.

See GRANT—CONSTRUCTION OF GRANTS

L. R., 18 I. A., 22

See HEREDITARY OFFICE
[I. L. R., 16 Bom., 374
L. R., 19 I. A., 39

See OUDH ESTATES ACT, 1869
[I. L. R., 17 Calc., 311, 444
L. R., 16 I. A., 183
L. R., 17 I. A., 54
I. L. R., 26 Calc., 81, 879

See OWNERSHIP, PRESUMPTION OF
[I. L. R., 15 Mad., 101
L. R., 18 I. A., 149

See SERVICE TENURE
[I. L. R., 14 Bom., 82

See SETTLEMENT—CONSTRUCTION
[I. L. R., 17 Bom., 40

See SETTLEMENT—EXPIRATION OF SETTLEMENT . . I. L. R., 4 Bom., 367

——— Endorsement on—

See REGISTRATION ACT, s 17, cl. (*b*)
[I. L. R., 14 Bom., 472

——— for collection of rents by gomashta.

See STAMP ACT, 1862, SCH A, CL. 43
[1 B. L. R., F. B., 55

——— Grant of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . . I. L. R., 17 Mad., 384
[L. R., 21 I. A., 93

SANAD—*continued.*

Production of—

See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s. 33 . I. L. R., 15 Bom., 516

——— **Title under—**

See OUDH ESTATES ACT, 1869.

[I. L. R., 3 Calc., 645

1. ——— **Construction of sanad—** *Mokurari.—Semble*—The word "mokurari" in a sanad does not necessarily import perpetuity. GOVERNMENT OF BENGAL *v.* JAFUR HOSSEIN KHAN

[5 Moore's I. A., 467

2. ——— *Istemrar sanad, Effect of.*—The effect of the istemrar sanad is to ascertain and limit the demand of the Government for revenue and to recognize and confirm, subject to this, the proprietary rights already in existence. *Katama Natchiar v. Rajah of Shivagunga, 9 Moore's I. A., 539*, distinguished. CANNAMMAL AIYAR *v.* VIJAYA RAGUNADA RUNGASAMY SINGAPULLIAR

[8 Mad., 114

3. ——— *Right to cut timber—Prescriptive title—Construction of grant.*—In construing grants by former Governments, the rule of English law as to the construction of grants to the subject by the Crown is the correct rule to be applied by the Courts in India. Where a sanad contained only the words "The village of Manavali has been conferred on you as inam, to be enjoyed by you, your son, and grandson. The Government dues of the village,—*viz.*, the koolbale koollkunoo (*i.e.*, all taxes and assessments), present taxes and future taxes, together with the house-tax, but exclusive of haks due to hakdars, shall continue to be debited from year to year, from the year next succeeding,"—it was held that the plaintiff's sanad did not operate as an alienation of the soil of the villages, or confer on him a proprietary title in it, and therefore gave the plaintiff no right to the timber growing upon the soil. The owner of such sanad, having only a right in the revenues and none in the soil of a village, cannot by thirty years' user become the proprietor of the timber. VAMAN JANARDAN JOSHI *v.* COLLECTOR OF THANA . 6 Bom., A. C., 191

4. ——— *Grant of village by Government, Existing rights how affected by.*—The grant of a village by Government, whether native or British, is subject to all existing rights against Government, whether or not the deed of grant contains an exception or reservation of such rights. Government cannot, by alienating its own rights in a village, albeit that the sanad purports to grant the village as a whole, extinguish or affect any substantive right therein appertaining to third persons, or convey to the grantee any larger or better estate or interest than was vested in Government. DESAI HIMATSINGJI JORAVARSINGJI *v.* BHAVABHAI KAYABHAI . . . I. L. R., 4 Bom., 643

5. ——— *Grant by Government—Property in the soil.*—A sanad by the State purporting to grant a village in inam, "including the waters, the trees, the stones and quarries, the mines, and the hidden treasures, but excluding the hakdars and inamdars," *held* to be a grant by the State of such proprietary right as it had in the soil of the village to the grantee. It is not open to the grantor to say that such words as the above mean nothing but land revenue. The saving of the rights of the hakdars and inamdars does not prevent the property in the soil, so far as it can be regarded as vested in Government, from passing to the grantee. RAYJI NARAYAN MANDLIK *v.* DADAJI BAPUJI

[I. L. R., 1 Bom., 523

6. ——— *Office of bhoonyee in Cuttack—Jagirdari right.*—Plaintiff's ancestor held certain lands from Government under a settlement at a fixed rent of R10-13-0, but was subsequently appointed bhoonyee with a remuneration of R6-8, recoverable by deduction from the rent, leaving only 6 annas and 4 pies payable to Government by way of rent. *Held* that the sanad of appointment to the office of bhoonyee created no jagirdari right, but that, on the contrary, the reservation of the rent of 6 annas 4 pies seemed to indicate that the tenancy remained, giving no right of exclusive occupancy to plaintiff as against defendant. CHOITUN MOHANTEE *v.* BHIKAREE MOHANTEE . . 17 W. R., 410

7. ——— *Nature of estate assigned—Prohibition of alienation.*—The zamindar in possession by a sanad conveyed to *A* as the head of a branch of the grantor's family an estate, part of the zamindari, in lieu of maintenance to which *A* was entitled out of the zamindari, "to hold and enjoy possession from generation to generation," subject to an allowance for maintenance to a certain class of the family described as "lowahokans" and "motalokans" (dependants and relations). *A*'s heir afterwards alienated a part of the estate for a valuable consideration. *Held*, first, in the absence of evidence of any class of persons answering the description of "lowahokans" and "motalokans" (which might have created a trust), that *A* took an absolute estate in the lands assigned to him; and, secondly, that the limitation in the sanad "from generation to generation" did not create such an estate as to operate as a bar to alienation by sale. NURSINGH DEB *v.* ROY KOYLASHNATH . . . 9 Moore's I. A., 55

8. ——— *S C*, a Hindu, granted a talukh to his sister, *K*, by a sanad in the following terms: "You are my sister; I accordingly grant you as a talukh for your support the three villages. H, F, and K, belonging to my zamindari, with all rights appertaining thereto, at a tahut jumma of R361. Being in possession of the lands and paying rent according to the tahut jumma, do you and the generations born of your womb successively (santan sreni kreme) enjoy the same. No other heir of yours shall have right or interest." At the date of the sanad *K* had one child, a daughter, *C*. She had afterwards a son, who died in her lifetime without issue, but whose widow, by his permission, adopted, after his death, a son, *C L*. *K* held undisputed possession of the talukh, during her lifetime, and by her will devised it to *C*, her daughter, and *C L*, her grandson by adoption, in equal moieties. On *K*'s death,

AD—*continued*

as heir of his father, *S C*, took possession of the ... as heir of his father, claiming under the will ... h whereupon *C* and *C L* ... *Held* by the Court of

... co plaintiff *C L* to a half share ... *Held* ... ntiffs were entitled to maintain the action ... that *C*, having been born ...

... ll of *K*, which she was incompetent ... The term "sontan" bears ... t must be dismissed ... e wider and more general meaning of issue, and is ... t confined to male progeny The true meaning of ... e words "srent kreme" in a sanad, as gathered ... om the context, was held to be in "succession" in ... he sense of succession first of the mother, and then ... f the children born of her womb *Held* by the Judicial Committee of the Privy Council that the earlier ...

... ing at the time of *K*'s death, in which event ... and his heirs but ...

[I. L. R., 4 Calc., 23: ... L. R., 5 I. A., 138

... [24 W. R., 288

9. ——————— *Grant of Oudh talukh to Hindu widow and her heirs—Oudh Estates Act (I of 1869), ss 3, 4, 8, and s 22 cl 11—Separate property of Hindu widow, Descent of.*—A sanad of a taluk in Oudh which had been previously confiscated by Government was granted with full power of alienation to the widow of the last owner, a Hindu, and to her heirs for ever, her name being entered in the first and second lists under Act I of 1869, s 8, one condition of the grant being expressed ...

... daughter, that the sanad conferred upon the widow and her heirs male the full proprietary right and title to the estate, and not merely an estate for life with remainder to the male heirs of her husband in the event of her dying intestate without having alienated it in her lifetime. *Held* also, as regards succession, that the limitation in the sanad was wholly superseded by Act I of 1869, and that the rights of the parties claiming by descent must be governed by s. 22 of that Act, the provisions of which are not controlled in any way by ss. 3 and 4 thereof *Held* further that under cl 11 of s 22 the above talukh, which was the separate property of the widow, descended, in the absence of a proved custom of her tribe to the contrary, to her daughter in preference to the son of the daughter of a rival widow and the remote male heirs of her husband BRIJ INDAR BAHADUR SINGH *v* JANKEE KOER LAL SHUNKER BUX *v*. JANKEE KOER LAL SEETLA BUX *v* JANKEE KOER [L. R., 5 I. A., 1: 1 C. L. R., 318

10. ——————— *Impartibility of zamindari—Partition—Succession by widow*—The owner of an impartible zamindari, which, though forming part of the family property, had by ancient custom been held and enjoyed by the eldest male member in the direct line, died leaving four sons and an infant grandson, *A*, by his eldest son, who had predeceased him During the minority of that grandson ... surviving sons executed a sanad which, ...

... *A*, the son ... take in equal shares the inam lands. Until *A* attains his proper age, we all should jointly manage the affairs of the said zamindari After *A* attains his proper age the zamindari of the inam lands allotted to him should be delivered over to him, and each should ...

... *sami v Periasami, L. R, 5 I A, 61*, cited. VADREVU RANGANAYA KAMMA *v* VADREVU BULLI RAMAIYA . . . . 5 C. L. R., 439

... of military service, was resumed by the Government ...

... rajas, under a "sanad i-milkiat istemrari," which described the zamindari lands comprised in it as "the six pergunnahs of Nuzvid in the Kondapalli Circar" The ...

... to which the ancient and entire zamindari of Nuzvid had been subject before 17..—*Held* that the six new zamindari, ... ons imposed on ... "heirs" used ... of the grantee according to the ordinary rules of inheritance of the Hindu law The Hansapur case, *Beer Pertab Sahee v Rajender Pertab Sahee, 12 Moore's I A, 1*, distinguished. VENKATA RAO *v* COURT OF WARDS [I. L. R., 2 Mad., 128

SANAD—*continued.*

S. C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW . . . 6 C. L. R., 153

S. C. VENKATA NARASIMHA APPA ROW *v.* NARAYYA APPA ROW. VENKATA NARASIMHA APPA ROW *v.* COURT OF WARDS . L. R., 7 I. A., 38

12. ———— *Impartibility—Mad. Reg. XXV of 1802.*—A zamindari, originally impartible, having become the property of the Government, and having been granted by it to a zamindar, who, having been appointed by proclamation in 1801 and having been put into possession, received a sanad in 1803,—*Held* that the zamindari retained the quality of impartibility. Also that this quality had not been transmuted into partibility either by the passing of the Regulation XXV of 1802 or by that law coupled with the issue of the sanad containing certain of its terms *Venkata Rao* v. *Court of Wards, I. L. R., 2 Mad., 128* (determining that the Nuzvid zamindari could not be identified with any estate existing before the sanad of 1802 put it on the same footing with ordinary zamindaris), distinguished. Reference made to *Beer Pertab Sahee* v. *Rajender Pertab Sahee, 12 Moore's I. A., 1,* as an authority for holding that a mode of acquisition which constitutes property as "self-acquired" in the hands of a member of an undivided family, and thereby subjects it to rules of devolution and of disposition different from those applicable to ancestral property, does not thereby destroy its character of impartibility. MUTTU VADUGANADHA TEVAR *v.* DORASINGHA TEVAR [I. L. R., 3 Mad., 290 L. R., 8 I. A., 99

13. ———— *Impartibility—Hindu law of succession.*—Where an ancient polliem was converted into a zamindari with a permanent assessment in 1803 by Government, and a "sanad-i-milkiat istemrari" (deed of permanent property) was granted to the zamindar with the usual stipulations, reservations, and directions, concluding with the words, "continuing to perform the above stipulations and to perform the duties of allegiance to the British Government, its laws and regulations, you are hereby authorized and empowered to hold in perpetuity to your heirs, successors, and assigns at the permanent assessment therein named, the zamindari of Sivagiri." *Held* that the Hindu law of succession was applicable, subject to such modifications as flowed from the impartible nature of the estate. MUTTYAN CHETTI *v.* SANGILI VIRA PANDIA CHINNA TAMBIAR [I. L. R., 3 Mad., 370

14. ———— *Rent-free sanad—Purchaser at Government sale—Confirmation issued by Government.*—In 1775 a rent-free sanad was granted to *M* for having put down wild elephants, the consideration in future being to cultivate and keep up a body of men and take care of the raiyats. *M* died and a fresh sanad was, in 1786, granted to *K* and *R*, they being thought to be his heirs; but in 1807, *M*'s true heirs having established their title, the Government gave them a fresh sanad in lieu of the one to *K* and *R*, reciting the circumstances. The zamindari in which these lands were situated was

SANAD—*concluded.*

settled in 1802, and was in 1850 sold for arrears of Government revenue. The appellant claimed to set aside the sanad of 1807, on the ground that Government had no right to give such a sanad, but he contended that, if it had, it could be set aside by a purchaser at a Government sale. *Held* that the sanad was not a new grant, but a confirmation of the one made before the decennial settlement, and that Government was competent to give such confirmation. LOPEZ *v.* MADDAN THAKOOR . . . 5 B. L. R., 521

S. C. LOPEZ *v.* MUDDUN MOHUN THAKOOR [13 Moore's I. A., 467: 14 W. R., P. C., 11

15. ———— Proof of lost sanad—*Mirasidars—Proof of title—Evidence—Long possession.*—Mirasidars who had sanads, but who have lost them, and those who never had them, may prove their title by other evidence, and long possession is a strong element in such proof. A sanad is not indispensable to the proof of mirasi tenure. A mirasi right or perpetuity of tenure, like other facts, may be proved by various means. BABAJI *v.* NARAYAN [I. L. R., 3 Bom., 340

16. ———— *Evidence—Beng. Reg. II of 1819, s. 28—Beng. Reg. XIV of 1825, s. 3—Title.*—Where an alleged original sanad was lost, the Judicial Committee, in view of the strict nature of the proof required in cases of claim under ancient sanads by Regulations II of 1819, s. 28, and XIV of 1825, s. 3, and taking all the circumstances into consideration, refused to consider the title under it established. FORESTER *v.* SECRETARY OF STATE [12 B. L. R., 120: 18 W. R., 349 L. R., I. A., Sup. Vol., 10

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———— of Board of Revenue.

See BOMBAY SURVEY AND SETTLEMENT ACT, 1865, *s. 32* I. L. R., 2 Bom., 110

See PARTITION—FORM OF PARTITION. [2 N. W., 26

See PARTITION—MISCELLANEOUS CASES. [5 B. L. R., 135: 13 W. R., 381

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See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
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I. L. R., 15 Bom., 594
I. L. R., 21 Mad., 91
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See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE. [I. L. R., 6 Calc., 687

SANCTION—*concluded*

——— to proceedings in lunacy.

See Lunatic 8 B L R, Ap, 50

——— to sue.

See Court of Wards Act (Bengal Act IX of 1879), s 55
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[I. L. R, 15 All., 61

1 APPLICATION FOR AND GRANT OF, SANCTION

1. ——— **Court to which application should be made**—*Criminal Procedure Code, 1869 s 169*—An application under s 169 of the Criminal Procedure Code praying for sanction to institute a prosecution on a charge of perjury should, as a general rule be first made to the Court before which the perjury is alleged to have been committed In the matter of the petition of Rajah of Venkatagiri . 6 Mad, 92

In the matter of the petition of Sheebpershad Chuckerbutty 17 W R., Cr, 46

2 ——— *Change of incumbents of office of Subordinate Magistrate*—A Subordinate Magistrate refused to grant sanction for a prosecution under s 169 of the Criminal Procedure Code, 1861 on the sole ground that the perjury was alleged to have been committed before his pre[illegible]

[illegible]

[7 Mad., Ap, 12

SANCTION FOR PROSECUTION
—continued.

1. APPLICATION FOR, AND GRANT OF, SANCTION—*continued.*

3. ———— **Initiation of case needing sanction**—*Initiation by party and by Court—Criminal Procedure Code, 1861, ss. 170, 171.*—In a case under s. 170, Criminal Procedure Code, 1861, the initiative was taken by the party interested, and the Court took no part in the matter except in the way of giving or refusing its sanction. S. 170 contemplated cases in which the Court itself took the initiative, but it was not intended that the Court should proceed in the manner there described except when the propriety or necessity of doing so is unmistakeable. IN THE MATTER OF KOONJ BEHAREE GHUR . . . . . **11 W. R., 171**

4. ———— *Initiation by Court—Criminal Procedure Code, 1872, s. 468—False charge—Penal Code, s. 211.*—There being nothing in the law requiring that sanction to prosecute under s. 211 of the Penal Code should only be granted upon application by a private prosecutor, a District Magistrate was competent, under s. 468 of the Code of Criminal Procedure, of his own motion to direct a prosecution where a complaint had been entertained and found to be false by a Magistrate subordinate to him. JUGUT MOHINI DASSI *v.* MADHU SUDHAN DUTT . . . . . **10 C. L. R., 4**

5. ———— *Initiation by Court—Criminal Procedure Code, 1872, ss. 470, 471.*—There was a difference in the proceedings to be adopted when a sanction was given under s. 470, and the institution by the Court of its own motion of proceedings under s. 471. GYAN CHUNDER ROY *v.* PROTAP CHUNDER DOSS

[I. L. R., 7 Calc., 208 : 8 C. L. R., 267

6. ———— **Effect of grant of sanction**—*Criminal Procedure Code (Act X of 1882), ss. 195 and 478—Civil Court's power to proceed under s. 578 after sanction given to a private person—Dismissal of a complaint by a private person, Effect of.*—The granting of sanction to a private person under cl. (*c*) of s. 195 of the Code of Criminal Procedure (Act X of 1882) does not debar a Civil Court from proceeding under s. 478; nor can the dismissal by a Magistrate of a complaint made by a private person be held to be a bar, till set aside, to a proceeding under that section. QUEEN-EMPRESS *v.* SHANKAR . . . **I. L. R., 13 Bom., 384**

7. ———— **Practice in granting sanction**—*Criminal Procedure Code (Act X of 1882), s. 195—Revisional power, Exercise of, by High Court.*—When subordinate Courts grant sanction to prosecute under s. 195 of the Criminal Procedure Code, it is incumbent on them so to frame the proceedings before them as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. A Magistrate, in disposing of a charge of theft, delivered the following judgment: "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of the proceedings. On an application to the High Court to revoke the sanction,—*Held* that the mere fact of the charge laid by the complainant not having been proved was not in itself sufficient ground for granting sanction to prosecute him under ss. 182 and 211 of the Penal Code, and as, beyond the judgment of the Magistrate, there was nothing on the record to show that there were sufficient grounds for granting the sanction, it should be revoked. KEDAR NATH DAS *v.* MOHESH CHUNDER CHUCKERBUTTY **I. L. R., 16 Calc., 661**

2. WHERE SANCTION IS NECESSARY OR OTHERWISE.

8. ———— **Prosecution of Municipal Corporation**—*Presidency Magistrates' Act (IV of 1877), s. 39—Public servant.*—A Municipal Corporation was not a public servant within the meaning of s. 39 of Act IV of 1877, and might therefore be prosecuted under the Penal Code without the preliminary sanction of the Government required by that section. EMPRESS *v.* MUNICIPAL CORPORATION OF THE TOWN OF CALCUTTA

[I. L. R., 3 Calc., 758 : 2 C. L. R., 520

9. ———— **Prosecution of Judge**—*Sanction of Government—Criminal Procedure Code, 1861, s. 167.*—The sanction of Government is required for the prosecution of any Judge, if a complaint is made against him as Judge. Construction of s. 167 of the Criminal Procedure Code, 1861. ANONYMOUS . . . **6 Mad., Ap., 22**

10. ———— *Criminal Procedure Code, 1882, s. 197—Sanction to prosecute Judge for words uttered on the bench.*—Where a Judge was charged with using defamatory language to a witness during the trial of a suit,—*Held* that, *under s. 197 of the Code of Criminal Procedure,* the complaint could not be entertained by a Magistrate without sanction. IN RE GULAM MUHAMMAD SHARIF-UD-DAULAH . **I. L. R., 9 Mad., 439**

11. ———— *Sanction to prosecute a Judge—Criminal Procedure Code (Act V of 1898), s. 197.*—A pleader applied to the Chief Presidency Magistrate for sanction under s. 197 of the Criminal Procedure Code to prosecute an Honorary Magistrate for using insulting and defamatory language towards him in the course of the trial of a case, and sanction was refused. On application to the High Court,—*Held* that no sanction under s. 197 of the Code is necessary, unless the Judge or public servant commits an offence in his judicial or official capacity. *Reg.* v. *Parshram Keshav, 7 Bom. H. C., Cr., 61; Imperatrix* v. *Lakshman Sakharam, I. L. R., 2 Bom., 481;* and *In re Sreemanto Chatterjee, unreported,* approved of. *In re Ghulam Muhammad, I. L. R., 9 Mad., 439,* dissented from. NANDO LAL BASAK *v.* MITTER

[I. L. R., 26 Calc., 869
3 C. W. N., 539

SANCTION FOR PROSECUTION —*continued*

2 WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued*

giving false evidence in a judicial proceeding QUEEN v RAMAOTAR PANRE 25 W R, Cr, 5

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forth in s 195 Criminal Procedure Code, no such sanction is required previous to the prosecution of a person charged with the abetment of such offences QUEEN EMPRESS v ABDUL KADAR SHERIFF SAHEB [I L R, 20 Mad, 8

14 ——— **Offence under s 182, Penal Code**—*Charge and conviction under different section of Penal Code than that for which sanction was given*—In a case ...

s 211, Penal Code The Magistrate tried the complaint of *A* as a complaint under s 211, but he subsequently framed a charge against *B* under s 182 Penal Code and punished him under that section *Held* with reference to s 168 Code of Criminal Procedure that the offences under ss 182 and 211 Penal Code being offences under Ch XIV of the Code of Criminal Procedure, the Magistrate was wrong in framing the charge under s 182 without obtaining the previous sanction of the Criminal Court which heard the previous complaint of *B* RAJ COOMAR v KIRTHU OJHA [13 W R, Cr, 67

15 ——— *Prosecution ...*

JUGAL KISHORE I. L. R., 8 All., 382

16 ——— **Criminal Procedure Code (Act X of 1882) s 195**—*Presidency Magistrate, Jurisdiction of—Penal Code (Act XLV of 1860), ss 116 193—Abetment—Instigating person to give false evidence*—*B* without having obtained sanction under s. 195 of the Criminal Procedure Code, charged *C* before the Chief Presidency Magistrate with instigating her to give false evidence in a certain divorce suit in which *C* was co-respondent. *Held* that the Chief Presidency Magistrate had no jurisdiction to try the case without the sanction of the Court before which the divorce proceedings were pending as the offence charged was alleged to have been committed in relation to those proceedings. CHANDRA MOHAN BANERJEE v BALFOUR [I. L. R., 26 Calc, 359

17 ——— *Offence under Penal Code (Act XLV of 1860) s 193—Giving false evidence—Investigation by Police*—No sanction under s 195 of the Criminal Procedure Code is necessary for taking cognizance of an offence under s 193 of the Penal Code when the alleged false evidence is said to have been fabricated not in relation to any proceeding pending in any Court but in the course of an investigation by the police into the matter of information received by them *Chandra Mohan Banerjee v Balfour I L R 26 Calc 359* distinguished JAGAT CHANDRA MOZUMDAR v QUEEN EMPRESS I L R., 26 Calc, 786 [3 C W N, 491

18 ——— **Charge under s 82 of Registration Act (III of 1877)**—It is not necessary that sanction should be given before instituting a charge under s 82 of the Registration Act GOPI NATH v KULDIP SINGH I L R., 11 Calc, 566

19 ——— **Criminal Procedure Code, s 195**—*Registration Act, s 41—Sanction of Registrar—Condition precedent to trial for forgery of will registered*—A Sub-Registrar acting under s 41 of the Registration Act 1877 is a "Court" within the meaning of s 195 of the Code of Criminal Procedure His sanction therefore was held to be necessary under s 195 before a Criminal Court could take cognizance of an offence committed before the Registrar while so acting IN RE VENKATACHALA [I L R., 10 Mad., 154

20 ——— *Police officer acting under s 361—Prosecution for giving false evidence to a police officer*—A police constable taking down

... made on it, whether the charge be framed singly or alternatively QUEEN EMPRESS v ISMAL VALAD FATARU [I. L. R., 11 Bom., 659

21 ——— *Registration Act (III of 1877), s 34—Forged document registered by Sub Registrar*—A Sub Registrar acting under s 34 of the Registration Act 1877 is not a "Court" within the meaning of s 195 of the Code of Criminal Procedure QUEEN EMPRESS v SUBBA [I. L. R, 11 Mad., 3

22 ——— *Registration Act ...*

... Sub-Registrar, the Sub-Registrar having granted sanction to prosecute the persons concerned without holding any enquiry, the Sessions Judge referred the case to the High Court under s. 215 of the Code of Criminal Procedure, in order that the commitment might be quashed on the ground that there was no legal sanction. *Held*

SANCTION FOR PROSECUTION —*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued.*

that no sanction was necessary as to the charge of forgery, and that the provisions of s. 195 of the Code of Criminal Procedure were not applicable. QUEEN-EMPRESS *v.* VYTHILINGA I. L. R., 11 Mad., 500

23. ———— *Sub-Registrar—Forgery—Penal Code (Act XLV of 1860), ss. 463, 467—Court—Judicial inquiry—Administrative inquiry.*—A Sub-Registrar under the Registration Act (III of 1877) is not a Judge and therefore not a "Court" within the meaning of s. 195 of the Code of Criminal Procedure (Act X of 1882). His sanction is therefore not necessary for a prosecution for forgery in respect of a forged document presented for registration in his office. *In re Venkatachala, I. L. R., 10 Mad., 154,* dissented from. The word "forgery" is used as a general term in s. 463 of the Penal Code (Act XLV of 1860); and that section is referred to in a comprehensive sense in s. 195 of the Criminal Procedure Code (Act X of 1882), so as to embrace all species of forgery, and thus includes a case falling under s. 467 of the Penal Code. The definition of "Court" given in the Evidence Act (I of 1872) is framed only for the purposes of the Act itself, and should not be extended beyond its legitimate scope. Distinction between a judicial and an administrative inquiry pointed out. QUEEN-EMPRESS *v.* TULJA [I. L. R., 12 Bom., 36

24. ———— *Registration Act (III of 1877), ss. 34, 35, 41—Forged document registered by Sub-Registrar.*—A mortgagor was charged with making a fraudulent alteration in his mortgage-deed which was then registered by a Sub-Registrar. *Held* that the sanction of the Sub-Registrar was not necessary for a prosecution on a charge of forgery. *In re Venkatachala, I. L. R., 10 Mad., 154,* and *Queen-Empress* v. *Subba, I. L. R., 11 Mad., 3,* explained. QUEEN-EMPRESS *v.* SOBHANADRI . . . I. L. R., 12 Mad., 201

25. ———— *Registration Act (III of 1877), ss. 72, 75—"Court"—Sanction for prosecution for perjury.*—A Registrar acting under the Registration Act, ss. 72—75, is a Court for the purposes of the Criminal Procedure Code, s. 195, and his sanction is therefore necessary for a prosecution for perjury committed in respect of the representation of a document to him for registration. ATCHAYYA *v.* GANGAYYA . I. L. R., 15 Mad., 138

26. ———— *Registrar—"Court"—Registration Act, 1877, s. 73.*—A Registrar acting under s. 73 of the Registration Act, 1877, is not a Court within the meaning of s. 195 of the Code of Criminal Procedure. *Atchayya* v. *Gangayya, I. L. R., 15 Mad., 138,* dissented from. QUEEN-EMPRESS *v.* RAM LAL [I. L. R., 15 All., 141

27. ———— *"Court"—Collector—Appraisement procedings—Bengal Tenancy Act (VIII of 1885), ss. 69, 70.*—The word "Court" used in s. 195 of the Criminal Procedure Code, without the previous sanction of which offences therein referred to, committed before it, cannot be taken cognizance of, has a wider meaning than the words "Court of Justice" as defined in s. 20 of the Penal Code. It includes a tribunal empowered to deal with a particular matter, and authorized to receive evidence bearing on that matter, in order to enable it to arrive at a determination. A Collector acting in appraisement proceedings under ss. 69 and 70 of the Bengal Tenancy Act is a Court within the meaning of the term as there used. Where therefore in certain appraisement proceedings some rent receipts, which were alleged to be forgeries, were filed by tenants before the Collector, and proceedings were subsequently taken against them before the Joint Magistrate charging them with offences under ss. 465 and 471 of the Penal Code,—*Held* that the Joint Magistrate could not take cognizance of the offences charged without the previous sanction of the Collector having been granted. RAGHOOBUNS SAHOY *v.* KOKIL SINGH *alias* GOPAL SINGH [I. L. R., 17 Calc., 872

28. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Complaint made to police—Penal Code (Act XLV of 1860), s. 211—Prosecution for laying false charge.*—A complaint made before the police and judicially declared to be false is not an offence "committed in, or in relation to, any proceeding in any Court," within the meaning of sub-s. (*b*) of s. 195 of the Criminal Procedure Code (Act X of 1882); and no sanction is therefore necessary for the prosecution of the complainant under s. 211 of the Penal Code. PUTIRAM RUIDAS *v.* MAHOMED KASEM [3 C. W. N., 33

29. ———— **Prosecution for false charge in complaint made at police station**—*Criminal Procedure Code, 1872, s. 468.*—A complaint made at a police station is not made before any Civil or Criminal Court, and, if it proved false, prosecution for it did not require the sanction of any Court under s. 468, Code of Criminal Procedure. GOVERNMENT OF BENGAL *v.* GOKOOL CHUNDER CHOWDHRY . . . . . 24 W. R., Cr., 41

RAM RUNJUN BHANDARI MADHUB GHOSE [25 W. R., Cr., 33

30. ———— **Giving false evidence before a police patel**—*Criminal Procedure Code, 1872, ss. 467, 468—Bom. Act VIII of 1867 (Village Police), s. 13—Penal Code (Act XLV of 1860), ss. 181, 191, and 193.*—A person who makes a false statement upon oath before a police patel acting under s. 13 of Bombay Act VIII of 1867 gives false evidence within the meaning of s. 191 of the Penal Code, and is punishable under s. 193; but his trial for that offence required no sanction, a police patel not being a Criminal Court within the definition of s. 4 of the Code of Criminal Procedure (see s. 468), although offences under Ch. X of the Penal Code committed before the same officer cannot be tried

SANCTION FOR PROSECUTION —*continued*

2 WHERE SANCTION IS NECESSARY OR OTHERWISE—*continued*

without a sanction (*See* s 467 of the Code of Criminal Procedure) IMPERATRIX *v* IRBASAPA [I. L. R., 4 Bom., 479

31 ——— Prosecution of police patel —*Criminal Procedure Code (1872), s 466—Bombay*

... [I. L. R., 4 Bom., 357

32 ——— Prosecution on alternative charge—*Giving false evidence in one Court or in another—Criminal Procedure Code, 1872 s 470*— When it is intended to charge a person with having made a false statement in the Court of a Magistrate or, alternatively, a false statement in the Court of a Subordinate Judge, there must be a proper sanction for a prosecution on each branch of the alternative. IN RE BALAJI SITARAM 11 Bom., 34

33 ——— ——— *Accused to whom pardon has been tendered Contradictory statements of—False evidence*—When a pardon is legally tendered to the accused under s. 337 of the Criminal Procedure Code (Act X of 1882), and the accused makes a statement on oath which he retracts in a subsequent judicial proceeding, a proper sanction is necessary for a prosecution for giving false evidence on each branch of the alternative charges. *In re Balaji Sitaram, 11 Bom., 34*, followed. QUEEN EMPRESS *v* DALA JIVA . . I. L. R., 10 Bom., 190

34 ——— *Criminal Procedure Code (Act V of 1898) s. 339—Tender of*

... evidence in respect of a statement made by a person who has accepted a tender of pardon should be entertained without the sanction of the High Court, as provided by s. 339, cl (3) of the Code QUEEN EMPRESS *v* NATU [I. L. R., 27 Calc., 137

35 ——— Charge of forgery—*Forged document used in civil case—Power of Deputy Magistrate—Criminal Procedure Code, 1861, ss 169, 170*—A Deputy Magistrate could not commit a person for forgery under s. 170 of the Code of Criminal Procedure when the Civil Court had sanctioned the prisoner's committal under s. 169 unless with the express sanction of that Court. QUEEN *v* DWARKANATH BOSE . 3 W. R., Cr., 31

36 ——— *Forged document used in civil case—Power of Magistrate—Criminal Procedure Code, 1861, s 170*—S 170, Code of Criminal Procedure, referred only to cases where a forged document had been put in evidence in a Civil or Criminal Court, in other cases a Magistrate was competent *proprio motu* to inquire into allegations of forgery, and no sanction under s 170 Code of Criminal Procedure, was necessary QUEEN *v* RAM DHARRY SINGH 10 W R., Cr., 5

37 ——— *Criminal Pro-*...

... in such suit is unnecessary in the case of persons not parties to, but witnesses in the suit, who are charged with the forgery of the document jointly with a party to the suit. EADARA VIRANA *v* QUEEN [I. L. R., 3 Mad., 400

38 ——— Offence before or against Mamlatdar's Court—*Code of Criminal Procedure (Act X of 1872), s 468*—The Mamlatdar's Court constituted by Bombay Act III of 1876 was a Civil Court within the meaning of s 468 of the Code of Criminal Procedure, therefore a complaint of an offence mentioned in that section, when such offence is committed before or against the Mamlatdar's Court, could not be entertained in the Criminal Courts except with the sanction of the Mamlatdar's Court or of the High Court to which it is subordinate. IN RE SAVANTA I. L. R., 5 Bom., 137

39 ——— Departmental inquiry into the misconduct of a revenue officer—*Judicial proceeding—Bombay Land Revenue Code (Bom Act V of 1879), ss 196 197—Criminal Procedure Code (Act X of 1882), s 195*—A Collector, on receiving information that his Deputy Chitnis had attempted to obtain a bribe, ordered his Assistant Collector to make an inquiry into the matter, with a view to taking action under s 32 of the Bombay Land Revenue Code The Assistant Collector found on inquiry that the charge of bribery was unfounded, and gave a sanction to prosecute the informant and his witnesses for giving false evidence. This sanction was revoked by the Collector The Chitnis appealed to the High Court against the order revoking the sanction *Held* that the inquiry made by the Assistant Collector was a departmental inquiry, and not a judicial proceeding and that the Assistant Collector, while holding the inquiry, was not a Court. No sanction for prosecution was therefore necessary under s. 195 of the Criminal Procedure Code. IN RE CHOTALAL MATHURADAS [I. L. R., 22 Bom., 936

40 ——— Charge against Village Magistrate for alleged offence while acting not in a judicial capacity—*Criminal Procedure Code (1898), s 197—Mad. Reg. XI*

SANCTION FOR PROSECUTION—*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*concluded.*

of 1816—Penal Code, s. 19—Judge.—A Village Magistrate, having been apprized of a disturbance in his village, forcibly separated the combatants, one of whom thereupon preferred a charge against him of causing hurt. The complaint was taken by the Sub-Magistrate upon his file without any previous sanction of the Government or other authority mentioned in s. 197 of the Code of Criminal Procedure. The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained. The Sub-Magistrate held that such sanction was unnecessary, and kept the case on his file and commenced to enquire into it. The Village Magistrate presented a petition to the District Magistrate raising the same ground of objection, whereupon the District Magistrate quashed the whole of the proceedings, holding that the Sub-Magistrate had no jurisdiction to try the case against a village officer without sanction having been first obtained. *Held* that sanction was not necessary under s. 197 of the Code of Criminal Procedure. The Village Magistrate, while preventing an offence, was not acting in the capacity of a Judge or a public servant not removeable from office without the sanction of Government, and therefore the sanction referred to had no application. *Held* also that the order of the District Magistrate quashing the proceedings of the Sub-Magistrate was passed without jurisdiction *Semble*—That a Village Magistrate exercising jurisdiction, and trying an offender under Regulation XI of 1816, is a Judge within the meaning of s. 197 of the Code of Criminal Procedure and s. 19 of the Penal Code. KANDASAMI CHETTI *v.* SOLI GOUNDAN

[I. L. R., 23 Mad., 540

3. WHEN SANCTION MAY BE GRANTED.

41. ——— Sanction previous to prosecution—*Jurisdiction of tribunal without sanction—Illegal conviction—Criminal Procedure Code, 1861, s. 167.*—S. 167 of the Code of Criminal Procedure required that sanction to prosecutions therein mentioned should be given before any such prosecution was commenced, and until the sanction was obtained, the tribunal by which the offence was triable had no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. REG. *v.* PARSHRAM KESHAV 7 Bom., Cr., 61

See QUEEN *v.* MOHIMA CHUNDER CHUCKERBUTTY [7 B. L. R., 26 : 15 W. R., Cr., 45

42. ——— Prosecution for perjury—*Sanction after order for committal to sessions.*—Sanction to a prosecution for perjury may be given by the Court before which the perjury was committed at any time, even after the order for commitment to the sessions has been made. QUEEN *v.* GOLAB SINGH [3 B. L. R., A. Cr., 10

QUEEN *v.* LEKHRAJ
[2 N. W., 132: Agra, F. B., Ed. 1874, 206

SANCTION FOR PROSECUTION—*continued.*

3. WHEN SANCTION MAY BE GRANTED—*concluded.*

43. ——— Sanction "at any time"—*Criminal Procedure Code, 1861, s. 169—"At any time."*—The words "such sanction may be given at any time" in s. 169, Code of Criminal Procedure, must be construed reasonably, and "any time" meant a time which did not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. SEETARAM SAHOO *v.* SHEWGOLAM SAHOO . . 18 W. R., Cr., 62

44. ——— Sanction after trial and conviction—*Criminal Procedure Code, 1872, s. 470.*—Under the words "at any time" in s. 470 of Act X of 1872, sanction to prosecute could not be given after the trial and conviction of the accused person. EMPRESS OF INDIA *v.* SAB SUKH . . . . I. L. R., 2 All., 533

45. ——— Charge of false evidence on alternative statements after tender of pardon.—The sanction necessary for a charge of giving false evidence made by the accused in retracting in a subsequent judicial proceeding a statement made by him on oath after a tender of pardon can only be granted before, and not after, the commencement of the prosecution. QUEEN-EMPRESS *v.* DALA JIVA [I. L. R., 10 Bom., 190

4. NOTICE OF SANCTION.

46. ——— Necessity of notice—*Criminal Procedure Code (Act X of 1882), s. 195, cl. c, para. 2.*—A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for has had notice of the application and an opportunity of being heard. ABBILAKH SINGH *v.* KHUB LALL [I. L. R., 10 Calc., 1100

47. ——— *Criminal Procedure Code (Act X of 1882), s. 195—Notice to accused.*—*Held* by the Full Bench that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. IN THE MATTER OF THE PETITION OF KRISHNANUND DAS. KRISHNANUND DAS *v.* HARI BERA [I. L. R., 12 Calc., 58

MANGAR RAM *v.* BEHARI I. L. R., 18 All., 358

48. ——— *Criminal Procedure Code, s. 195—Notice to accused.*—A conviction for preferring a false complaint is not illegal only by reason of the prosecution having been sanctioned without notice previously given to the accused. Sanctioning a prosecution for an offence is a judicial act, and the party to whose prejudice it is done must be previously heard and a judgment

SANCTION FOR PROSECUTION —*continued.*

4 NOTICE OF SANCTION—*concluded.*

which the t upon a evidence In cases, the complainant and hears the evidence and acquits or discharges the accused, and then, without notice to the complainant, sanctions his prosecution for preferring a false charge, sanction cannot be said to be improperly given QUEEN-EMPRESS v. BEARI [I. L. R., 10 Mad., 232

49. ———— *Criminal Procedure Code, s 195—Omission to give notice of sanction to accused*—A Magistrate, in disposing of a charge of theft, delivered the following judgment "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted" There was no further record of the proceedings Immediately on the judgment being delivered, the pleader appearing for the accused applied for sanction to prosecute the complainant under ss 182 and 211 of the Penal Code. The Magistrate refused to hear the application then, on the ground that it was not the proper time fixed by him to hear applications The attorney for the complainant who had expressed his willingness to have the application heard and disposed of there and then, intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for On an application to the High Court to revoke the sanction —*Held* that the Magistrate

heard. KEDARNATH DAS v MOHESH CHUNDER CHUCKERBUTTY . . I. L. R., 16 Calc., 661

50. ———— *Criminal Procedure Code (Act V of 1898), s 195—Omission to give accused opportunity to be heard*—Although notice is not invariably necessary in cases under the section referred to the grant of an order sanctioning prosecution is a judicial act, and there may be circumstances—(such as in those cases in which there has been a difference of opinion as to the desirability for granting sanction) in which a proper discretion cannot be said to have been exercised unless the persons sought to be prosecuted have given an opportunity to be heard. PAMPAPATI SASTRI v SUBBA SASTRI . . I. L. R., 23 Mad., 210

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION.

51. ———— **Nature of sanction**—*Permissive nature of sanction—Discretion of party obtaining sanction—Criminal Procedure Code, 1872, s. 468.*—The sanction to prosecute, contemplated in s 468 of the Criminal Procedure Code, was not a

MONDUL. GRIDHARI MONDUL v UCHIT JHA [I L R., 8 Calc., 435: 10 C. L. R., 46

52. ———— *Sanction by High Court to prosecution for perjury—Presumption that proper procedure will be adopted.*—Where the High Court sanctions a prosecution for perjury, it is will be a Court KEEBUT SINGH v NARAIN PASSEE 25 W. R., Cr., 14

53. ———— **Form of sanction**—*Sanction in writing and attached to record.*—It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative QUEEN v KRISTNA RAU [7 Mad., 58

54. ———— The law does not require the sanction to a prosecution to be given in any particular form of words QUEEN v LEKHRAJ [2 N. W., 132: Agra, F. B., Ed. 1874, 206

55. ———— *Criminal Procedure Code (1882), s 195—Form of sanction for prosecution for false evidence—Requisites of a proper sanction*—A sanction to prosecute for giving false evidence should specify clearly the statement alleged to be false, so that the person sought to be charged may be definitely informed what is the criminal act alleged against him IN RE JIVAN AMBAIDAS . I. L. R., 19 Bom., 362

56. ———— *Criminal Procedure Code, 1861, ss 169-170—Statement of particular offences*—When a Civil Court gives sanction to a prosecution under ss. 169 and 170, Code of Criminal Procedure, it should state with precision the particular offence or offences for the prosecution of which it gives sanction. QUEEN v. OOMA MOYEE DEBEA . . . 13 W. R., Cr., 25

57. ———— *General sanction—Prosecution for false evidence—Penal Code,*

is based, and the exact offences which the Magistrate is to investigate, should be pointed out. QUEEN v. KARTICK CHUNDER HOLDAR 9 W. R., Cr., 58

Contra, QUEEN v KADIR BUX *alias* KADIR MAHOMED . . . 11 W. R., Cr., 17

58. ———— *Prosecution under Criminal Procedure Code, 1872, s 470—Requisites of proper sanction*—A sanction for a prosecution under s. 470 of the Criminal Procedure

SANCTION FOR PROSECUTION—*continued.*

2. WHERE SANCTION IS NECESSARY OR OTHERWISE—*concluded.*

of 1816—Penal Code, s. 19—Judge.—A Village Magistrate, having been apprized of a disturbance in his village, forcibly separated the combatants, one of whom thereupon preferred a charge against him of causing hurt. The complaint was taken by the Sub-Magistrate upon his file without any previous sanction of the Government or other authority mentioned in s. 197 of the Code of Criminal Procedure. The Village Magistrate raised the objection that the prosecution could not legally be proceeded with until such sanction had been first obtained. The Sub-Magistrate held that such sanction was unnecessary, and kept the case on his file and commenced to enquire into it. The Village Magistrate presented a petition to the District Magistrate raising the same ground of objection, whereupon the District Magistrate quashed the whole of the proceedings, holding that the Sub-Magistrate had no jurisdiction to try the case against a village officer without sanction having been first obtained. *Held* that sanction was not necessary under s. 197 of the Code of Criminal Procedure. The Village Magistrate, while preventing an offence, was not acting in the capacity of a Judge or a public servant not removeable from office without the sanction of Government, and therefore the sanction referred to had no application. *Held* also that the order of the District Magistrate quashing the proceedings of the Sub-Magistrate was passed without jurisdiction *Semble*—That a Village Magistrate exercising jurisdiction, and trying an offender under Regulation XI of 1816, is a Judge within the meaning of s. 197 of the Code of Criminal Procedure and s. 19 of the Penal Code. KANDASAMI CHETTI *v.* SOLI GOUNDAN

[I. L. R., 23 Mad., 540

3. WHEN SANCTION MAY BE GRANTED.

41. ———— Sanction previous to prosecution—*Jurisdiction of tribunal without sanction—Illegal conviction—Criminal Procedure Code, 1861, s. 167.*—S. 167 of the Code of Criminal Procedure required that sanction to prosecutions therein mentioned should be given before any such prosecution was commenced, and until the sanction was obtained, the tribunal by which the offence was triable had no jurisdiction, and a conviction founded on evidence taken without such sanction would be bad. REG. *v.* PARSHRAM KESHAV 7 Bom., Cr., 61

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[2 N. W., 132: Agra, F. B., Ed. 1874, 206

SANCTION FOR PROSECUTION—*continued.*

3. WHEN SANCTION MAY BE GRANTED—*concluded.*

43. ———— Sanction "at any time"—*Criminal Procedure Code, 1861, s. 169—"At any time."*—The words "such sanction may be given at any time" in s. 169, Code of Criminal Procedure, must be construed reasonably, and "any time" meant a time which did not unduly prejudice the party to be prosecuted, or put him in a worse position than he was before. SEETARAM SAHOO *v.* SHEWGOLAM SAHOO . . 18 W. R., Cr., 62

44. ———— *Sanction after trial and conviction—Criminal Procedure Code, 1872, s. 470.*—Under the words "at any time" in s. 470 of Act X of 1872, sanction to prosecute could not be given after the trial and conviction of the accused person. EMPRESS OF INDIA *v.* SABSUKH . . . . I. L. R., 2 All., 533

45. ———— *Charge of false evidence on alternative statements after tender of pardon.*—The sanction necessary for a charge of giving false evidence made by the accused in retracting in a subsequent judicial proceeding a statement made by him on oath after a tender of pardon can only be granted before, and not after, the commencement of the prosecution. QUEEN-EMPRESS *v.* DALA JIVA

[I. L. R., 10 Bom., 190

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46. ———— Necessity of notice—*Criminal Procedure Code (Act X of 1882), s. 195, cl. c, para. 2.*—A sanction to prosecute, when applied for subsequently to the termination of the proceedings in the course of which the offence is alleged to have been committed, ought not to be granted, unless the person against whom the sanction is applied for has had notice of the application and an opportunity of being heard. ABBILAKH SINGH *v.* KHUB LALL

[I. L. R., 10 Calc., 1100

47. ———— *Criminal Procedure Code (Act X of 1882), s. 195—Notice to accused.*—*Held* by the Full Bench that no notice is necessary to the person against whom it is intended to proceed, before the Court, before which the alleged offence has been committed, can, under s. 195 of the Criminal Procedure Code, sanction a complaint being made to a Magistrate regarding one of the offences specified in that section. IN THE MATTER OF THE PETITION OF KRISHNANUND DAS. KRISHNANUND DAS *v.* HARI BERA

[I. L. R., 12 Calc., 58

MANGAR RAM *v.* BEHARI I. L. R., 18 All., 358

48. ———— *Criminal Procedure Code, s. 195—Notice to accused.*—A conviction for preferring a false complaint is not illegal only by reason of the prosecution having been sanctioned without notice previously given to the accused. Sanctioning a prosecution for an offence is a judicial act, and the party to whose prejudice it is done must be previously heard and a judgment

SANCTION FOR PROSECUTION
—*continued.*

4 NOTICE OF SANCTION—*concluded.*

formed upon legal evidence In cases in which the Magistrate dismisses the original complaint upon a report from the police, there is no legal evidence before him on which to form his judgment. In cases, however, in which the Magistrate examines the complainant and hears the evidence and acquits or discharges the accused, and then, without notice to the complainant, sanctions his prosecution for preferring a false charge, sanction cannot be said to be improperly given QUEEN-EMPRESS *v.* BEARI [I. L R, 10 Mad, 232

49. ———— *Criminal Procedure Code, s 195—Omission to give notice of sanction to accused.*—A Magistrate, in disposing of a charge of theft, delivered the following judgment "The charge of theft of doors and windows is not proved at all against the accused. They are acquitted." There was no further record of the proceedings Immediately on the judgment being delivered, the pleader appearing for the accused

intimated that he was prepared to show cause why sanction should not be granted, and asked that notice of any future application might be given to the complainant The accused renewed the application the following day without notice to, and in the absence of, the complainant or his attorney, and the Magistrate granted the sanction asked for On an application to the High Court to revoke the sanction,—*Held* that the Magistrate did not exercise a proper discretion under the cir-

I. L. R., 10 Calc, 601

50. ———— *Criminal Procedure Code (Act V of 1898), s 195—Omission to give accused opportunity to be heard*—Although notice is not invariably necessary in cases under the section referred to, the grant of an order sanctioning prosecution is a judicial act, and there may be

tunity to be heard. PAMPAPATI SASTRI *v* SUBBA SASTRI . . . I. L. R., 23 Mad., 210

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION.

51. ———— Nature of sanction—*Permissive nature of sanction—Discretion of party obtaining sanction—Criminal Procedure Code, 1872, s. 468.*—The sanction to prosecute, contemplated in

SANCTION FOR PROSECUTION
—*continued*

5 NATURE FORM, AND SUFFICIENCY OF SANCTION—*continued.*

s 468 of the Criminal Procedure Code, was not a direction to prosecute, but was a permission granted to a private person to exercise his own unfettered discretion as to whether he would take proceedings or not IN THE MATTER OF THE PETITION OF GRIDHARI MONDUL. GRIDHARI MONDUL *v* UCHIT JHA [I L R., 8 Calc, 435. 10 C. L. R, 46

52. ———— *Sanction by High Court to prosecution for perjury—Presumption that proper procedure will be adopted.*—Where the High Court sanctions a prosecution for perjury, it is implied that the proper legal procedure will be adopted, and the proceedings instituted in a Court having jurisdiction to entertain the charge. KEERUT SINGH *v* NARAIN PASSEE 25 W. R., Cr, 14

53 ———— Form of sanction—*Sanction in writing and attached to record.*—It is very desirable that such sanction or direction should be in writing and attached to the record, but it is by no means legally imperative. QUEEN *v* KRISTNA RAU [7 Mad., 58

54 ———— The law does not require the sanction to a prosecution to be given in any particular form of words QUEEN *v* LEKHRAJ [2 N. W, 132 Agra, F. B, Ed 1874, 206

55. ———— *Criminal Procedure Code (1882), s 195—Form of sanction for prosecution for false evidence—Requisites of a*

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is based, and the exact offences which the Magistrate is to investigate, should be pointed out. QUEEN *v.* KARTICK CHUNDER HOLDAR 9 W. R., Cr., 58

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58. ———— *Prosecution under Criminal Procedure Code, 1872, s. 470—Requisites of proper sanction*—A sanction for a prosecution under s. 470 of the Criminal Procedure

SANCTION FOR PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

Code must designate the Court where the false statement was alleged to have been made and the occasion on which it was committed. It is desirable, if not necessary, that in the sanction for prosecution the description of the offence intended to be prosecuted should be stated in general terms, although details may be omitted. IN RE BALAJI SITARAM

[11 Bom., 34

59. ———— *Criminal Procedure Code, 1882, s. 195—False evidence—Specification of place and time of offence.*—A sanction to a prosecution for giving false evidence granted under s. 195 of the Criminal Procedure Code should specify the place where, and the time when, the alleged false evidence was given, and in substance the assignments of perjury, as also the sections of the Penal Code under which proceedings are authorized. HAR DIAL *v.* DOORGA PRASAD . **I. L. R., 6 All., 105**

60. ———— *Specification of place and occasion of offence—Criminal Procedure Code, 1882, s. 195.*—Sanction to a prosecution granted under s. 195, Criminal Procedure Code, 1882, should specify the Court or other place in which, and the occasion on which, the offence was committed; and such sanction should not be granted without a preliminary inquiry, where such inquiry is "necessary," within the meaning of s. 476 of the Code. EMPRESS *v.* NAROTAM DAS . **I. L. R., 6 All., 98**

61. ———— *Specification of particulars of offence—Criminal Procedure Code, 1882, s. 195—False evidence—Preliminary inquiry.*—In a suit on a bond, instituted in the Court of a Munsif, the question whether the defendant had executed the bond or not was referred to arbitration. The arbitrator decided that the defendant had not executed the bond, and that it was a forgery. The Munsif dismissed the suit in accordance with the award. The defendant then applied to the Munsif for sanction to prosecute the plaintiff, without specifying in his application the offences in respect of which he desired to prosecute. The Munsif granted sanction, merely observing that there were sufficient grounds for sanctioning the prosecution, without giving any reasons or specifying the offence or offences in respect of which sanction was granted. *Held* that the terms in which the Munsif had given his sanction to a prosecution were not sufficiently explicit, and that he should have mentioned the section or sections of the Penal Code under which he authorized criminal proceedings to be taken, as also in a general way the offence or offences to be charged, the date of commission, and the place where committed. Further, that as the Munsif himself had not determined the question of forgery in the suit, he should have made some inquiry to satisfy himself that there were materials to justify a prosecution. PARSOTAM LAL *v.* BIJAI . . . **I. L. R., 6 All., 101**

62. ———— *Omission to specify particulars of offence—False evidence—Criminal Procedure Code (Act XXV of 1861) ss. 169 and 170.*—Where persons were charged with offences under ss. 471 and 193 of the Penal Code, committed in proceedings before the Civil Court, and for which therefore the sanction of the Civil Court was necessary under ss. 169 and 170 of Act XXV of 1861,—*Held* that the sanction, which simply gave permission, and did not specify the particular act or acts and the particular words which constituted the offences, was insufficient. QUEEN *v.* GABIND CHANDRA GHOSE

[7 B. L. R., 28 note: 10 W. R., Cr., 41

63. ———— *Criminal Procedure Code (1882), s. 195—Necessary contents of application for sanction.*—An application for sanction to prosecute for forgery or perjury must indicate precisely the document in respect of which forgery is said to have been committed, or must set forth in detail the statements alleged to be false showing the place where and the occasion on which such alleged false statements were made. BALWANT SINGH *v.* UMED SINGH . . . **I. L. R., 18 All., 203**

64. ———— *Criminal Procedure Code (Act V of 1898), s. 195—Notice to person to prosecute whom sanction is sought—Proceedings before Sessions Court—Proper exercise of discretion.*—A Sessions Court, when granting sanction to prosecute under s. 195 of the Code of Criminal Procedure, should so frame the proceedings before it as to enable the High Court to satisfy itself from the record whether the application for sanction has been properly granted or not. An order of a Sessions Judge, sanctioning a prosecution, containing nothing from which the High Court could conclude that he had directed his mind to the real question in such cases, namely, whether there was a *primâ facie* case on which a prosecution could be instituted with a *fair chance of success, the High Court revoked the* sanction. PAMPAPATI SASTRI *v.* SUBBA SASTRI

[I. L. R., 23 Mad., 210

65. ———— *Giving false evidence in a judicial proceeding—Penal Code (Act XLV of 1860), s. 193—Granting sanction to prosecute youthful offenders.*—A sanction to prosecute under the provisions of s. 195 of the Criminal Procedure Code (Act X of 1882) must specify the Court in which, and the occasions on which, the offence was committed; and where the offence is that of giving false evidence in a judicial proceeding (s. 193, Penal Code), it should further specify the particular statements in respect of which the offence is imputed. Where therefore sanction was granted to prosecute certain persons, one of whom was a boy of eleven years, for giving false evidence in a dacoity case and the sanction did not contain the essentials referred to,—*Held* that it was defective in form and could not stand, and that the High Court could not take it upon itself to rectify the informality by supplying the necessary particulars. *Held* also that the sanction for prosecution against the boy-petitioner was unadvisable in

SANCTION FOR PROSECUTION —*continued*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

consideration of his youth, and should therefore be revoked. GOBARDHONE CHOWKIDAR *v* HABIBULLA [3 C. W. N, 35

66. ———— *Refusal of sanction under mistake or as being unnecessary*—*Held* that the declining by a Court of revenue to sanction a prosecution under ss 468 and 469 of Act X of 1872, under a mistaken view of the law and under the impression that sanction was unnecessary, did not constitute sanction EMPRESS OF INDIA *v* SABSUKH [I. L. R., 2 All., 533

67 *Statement by Collector that he has no objection to give sanction again after sanction by Deputy Collector*—In a suit by *A* for arrears of rent above R100 a decree was passed against *B*, *C*, and *D*, wherein certain documents filed by them were held to be forgeries *A* applied for and obtained an order from the Deputy Collector who tried the suit for leave to prosecute *B* and *C* in the Criminal Court *A* afterwards applied to the Collector for leave to prosecute *B*, *C*, and *D*, whereupon the Collector passed the following order "Sanction has already been given once by the Deputy Collector I, however, have no objection to give it a second time, as the petitioner desires it" *D* was convicted by the Sessions Judge on a charge under s 471 of the Penal Code. On appeal by *D*,—*Held* that no proper leave had been obtained to prosecute *D* and this defect was not cured by the subsequent proceedings, and the conviction must be quashed QUEEN *v* MAHIMA CHANDRA CHUCKERBUTTY [7 B. L. R., 26: 15 W. R., Cr, 45

68 — *Statement by Munsif that he has no objection to give sanction if evidence is thought sufficient*—*Sufficiency of sanction*—On an applicat on to a Mun f for sanct on [illegible]

[illegible] sanction" *Held* that the order was a sufficient sanction to support a prosecution IN THE MATTER OF JADU NATH HAZRA *v* ANNODA PROSAD SIRCAR [11 C. L. R., 53

69 ———— *Penal Code,* [illegible]

[illegible] and Dais, these three persons, made before me certain statements contradictory of the statements which they had made before the committing Magistrate. Therefore if from such statements of theirs they may be liable to any charge, there is sanction from here" (i e, I give my sanction) "for their prosecution." *Held* that this gave sufficient sanction for the prosecution of the accused under s. 193 of the Penal Code, and that it was not necessary that the authority giving the sanction should specify the particular section of the Penal Code under which the accused was permitted to be prosecuted. REG *v* TAI 8 Bom., Cr, 24

70. ———— *Issue of warrant*—*Implied sanction*—*Criminal Procedure Code, 1861, s 169*—The object of the sanction required by s 169, Code of Criminal Procedure, was to ensure that the prosecution should be instituted after due consideration on the part of the Court before whom the false evidence was given, or on the part of a Court to which such Court was subordinate When a Magistrate perused the papers of a case which had been forwarded to him by a Subordinate Magistrate for consideration, and then sent on the papers to the District Superintendent of Police with an opinion adverse to the prisoner, and the District Superintendent of Police requested the Magistrate to issue a warrant against the prisoner, charging him with giving false evidence, it was held that the issue of the warrant was a sufficient sanction under s. 169 on the part of the Magistrate QUEEN *v* MAHOMED HOSSAIN [16 W R, Cr, 37

71. ———— *Instruction from* [illegible]

[illegible] case tried [illegible] evidence before it in such case, was held not to amount to sanction to a prosecution of such person for such offence within the meaning of s. 468 of Act X of 1872, that section supposing a complaint, or at least an application for sanction for a complaint EMPRESS *v* GOBARDHAN DAS I. L R., 3 All, 62

72. ———— *Criminal Procedure Code (1882), ss 195 and 476*—*Nature of sanction* [illegible] *plication* [illegible] *granted* [illegible] Code of [illegible] tion for s[illegible] made, a [illegible] sanction, but should take action in the manner [illegible] to [illegible] [I. L R, 18 All., 213

73. ———— *Order of Munsif directing that Magistrate inquire into a case*—*Criminal Procedure Code 1882, ss 195 and 476*—"*Sanction*"—"*Complaint*"—*Civil Procedure Code, 1882, s 643*—On the 2nd August 1884 a Munsif, who was of opinion that in the course of a suit which had been tried before him certain persons had committed offences under ss. 193, 463, and 471 of the Penal Code, and that the prosecution of these persons was desirable, made an order which he described as passed under s 643 of the Civil Procedure Code, and in which he directed that the accused should be sent to the Magistrate, and that the Magistrate should

SANCTION FOR PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

inquire into the matter. In May 1885, upon an application by one of the accused to the District Court to "revoke the sanction for prosecution granted by the Munsif," it was contended that the "sanction" had expired on the 2nd February 1885, and had ceased to have effect. *Held* by the Full Bench that the Munsif's order, whether it was or was not a sanction, was a sufficient "complaint" within the meaning of s. 195 of the Criminal Procedure Code, and that the limitation period prescribed by that section was not applicable to the case. *Per* PETHERAM, *C.J.*, and STRAIGHT, *J.*—That considering that s. 643 of the Civil Procedure Code was closely similar to s. 476 of the Criminal Procedure Code, the Munsif's order might be taken as having been passed under the latter section. Also *per* PETHERAM, *C.J.*, and STRAIGHT, *J.*—The words in s. 195 of the Criminal Procedure Code, "except with the previous sanction or on the complaint of the public servant concerned," must be read in connection with s. 476, which was enacted with the object of avoiding the inconvenience which might be caused if a Munsif, or a Subordinate Judge, or a Judge were obliged to appear before a Magistrate and make a complaint on oath, like an ordinary complainant, in order to lay the foundation for a prosecution. The language of s. 476 indicates that where a Court is acting under s. 195, a complaint in the strict sense of the Code is not required, and that the procedure therein laid down constitutes the "complaint" mentioned in s. 195. ISHRI PRASAD *v.* SHAM LAL . . . I. L. R., 7 All., 871

74. ——— *Report of police or medical officers—Prosecution under Bombay Military Cantonments Act, III of 1867.*—Reports of police or medical officers are not a sufficient sanction for prosecutions under this Act. A complaint on oath or solemn affirmation is necessary. REG. *v.* LADU [7 Bom., Cr., 87

75. ——— *Implied sanction—Criminal Procedure Code, 1869, s. 168—Penal Code, ss. 177, 193—Framing charge.*—The form of an accusation by a District Superintendent of Police, under s. 193 of the Penal Code, does not preclude a Magistrate from framing the charge under s. 177; the sanction of the District Superintendent required under s. 168, Code of Criminal Procedure, to give the Magistrate jurisdiction, need not be express, but might be implied. IN THE MATTER OF ASHRUFF HOSSEIN [16 W. R., Cr., 67

76. ——— *Implied sanction—Criminal Procedure Code, 1861, s. 169.*—Where the Magistrate before whom a witness gave false evidence himself committed such a witness for trial, his sanction of the prosecution, under s. 169 of the Criminal Procedure Code, was held to be implied. REG. *v.* MUHAMMAD KHAN VALAD IMAM KHAN [6 Bom., Cr., 54

77. ——— *Implied sanction—Prosecution for non-attendance in obedience to summons—Criminal Procedure Code, 1861, s. 168.*—Prosecution for non-attendance in obedience to a summons was entertained without the sanction required by s. 168 of the Criminal Procedure Code. *Held* that there was an implied sanction for the prosecution, as the conviction was by the same Magistrate whose summons was treated with contempt. REG. *v.* GANU BIN TATIA SELAR . . . 5 Bom., Cr., 38

78. ——— *Implied sanction—Direction to commit.*—When a Sessions Court directs a commitment, it must be taken to sanction the prosecution out of which the commitment arises. QUEEN *v.* LEKHRAJ [2 N. W., 132: Agra, F. B., Ed. 1874, 206

79. ——— *Letter from Civil Court to Subordinate Magistrate—Specification of sections of Penal Code for which sanction is given—Jurisdiction of Magistrate to commit under other section.*—Where a Civil Court, by letter to a Subordinate Magistrate with committing powers, gave sanction for the prosecution of the accused under ss. 463 and 471 of the Penal Code (making and using a false document), and where the Magistrate, in committing the accused for trial, in addition to framing a charge under these sections, added a head of charge under s. 193 (giving false evidence), it was held that the Magistrate had no jurisdiction to commit the accused for trial on the last-mentioned head of charge. REG. *v.* SUBI SANI [8 Bom., Cr., 28

80. ——— *Suggestion that person ought to be prosecuted.*—When a Subordinate Magistrate, after trying a case, sent the record to the District Magistrate with a suggestion that certain persons ought to be prosecuted under s. 211 of the Penal Code, the High Court held that this did not constitute a sanction to prosecute. IN THE MATTER OF THE PETITION OF KHEPU NATH SIKDAR. KHEPU NATH SIKDAR *v.* GRISH CHUNDER MUKERJI [I. L. R., 16 Calc., 730

81. ——— *Criminal Procedure Code, s. 197—Prosecution of public servants—Indefiniteness of sanction.*—An order by the Board of Revenue sanctioning the prosecution of a Deputy Tahsildar by the Collector of the District for "bribery or such of the charges set forth in the Deputy Collector's report as he thinks likely to stand investigation by a Criminal Court" is not a legal sanction within the meaning of the Criminal Procedure Code, s. 197, and a commitment on any of such charges should be quashed. QUEEN-EMPRESS *v.* SAMAVIER [I. L. R., 16 Mad., 468

82. ——— *Criminal Procedure Code, ss. 195, 476—Preliminary inquiry—Penal Code (Act XLV of 1860), s. 182—Criminal Procedure Code (Act X of 1872), s. 471.*—Where a Deputy Commissioner issued a sanction to prosecute the accused upon an express application made on behalf of a certain person against whom a charge of torture had been made, and which he found, from

SANCTION FOR PROSECUTION—*continued.*

5 NATURE, FORM, AND SUFFICIENCY OF SANCTION—*continued.*

reasons stated in his judgment, to be false,—*Held*, taking the order to have been one made under s 195 of the Code of Criminal Procedure, that it was a proper sanction, inasmuch as it was given to a contemplated prosecution by a definite person *Semble* under it was er that section that there should be any evidence on the

inquiry ought to be held, the adoption of a rigid rule to that effect is neither rendered imperative by the law nor is it desirable *In the matter of Mutty Lall Ghose, I. L R, 6 Calc, 308, Queen v Baijoo Lall, I. L R, 1 Calc, 450*, and *Khepu Nath Sikdar v Girish Chunder Mukerjee, I L R, 16 Calc, 370*, referred to and distinguished BAPERAM SURMA v GOURI NATH DUTT

[I. L R., 20 Calc, 474

83. ———— *Criminal Procedure Code, ss 476, 195—Sanction by Magistrate*

quiry *Baperam Surma v Gouri Nath Dutt, I L. R, 20 Calc, 474*, followed QUEEN EMPRESS v MATADADAL . I. L. R, 15 All, 392

84. ———— *Criminal Procedure Code, 1898, ss 195, 476—Sanction for prosecution for false statement made in proceedings under Land Acquisition Act (I of 1894)*—Sanction under s 195 of the Code of Criminal Procedure should be given only on application made for it by some person who may desire to complain of the particular offence and whose complaint could not be entertained without such sanction *In the matter of Banirsi Das, I. L R, 18 All., 213*, and *Baperam Surma v. Gouri Nath Dutt, I. L R, 20 Calc, 474*, referred to DURGA DAS RUKHIT v QUEEN-EMPRESS

[I. L R., 27 Calc, 820

85. ———— Sufficiency of sanction—*Sanction of official superior—Penal Code, s 182—Criminal Procedure Code, 1861, s. 168*—Where a prosecution of an offence under Ch X of the Penal

cedure were held to have been complied with. QUEEN v RAM GOLAM SINGH . 11 W. R., Cr., 22

See IN THE MATTER OF THE PETITION OF ABDOOL LUTEEF . . . . 9 W. R., Cr., 31

86. ———— *Sanction of official superior—Criminal Procedure Code, 1861, s 169—Judicial Commissioner sitting as Sessions Judge*—Where the Judicial Commissioner of Assam, sitting as Sessions Judge, certified, in his capacity of Judge of the Chief Civil Court in Assam, that a charge of false evidence was entertained with the sanction of the District Court of Assam, to which the Court of the Munsif of Debrooghur, before or against which the offence was committed, was subordinate,—*Held* that the sanction required by s. 169, Code of Criminal Procedure had been given BAPOORAM AHAM v GUNGARAM KACHAREE

[17 W. R., Cr., 54

87. ———— *Sanction mentioning wrong section of Code—Criminal Procedure Code, 1861, ss 169, 170—Prosecution under different section than that for which sanction was obtained.*—The prosecutor applied to a Civil Court for leave

[4 Bom., Cr, 28

88. ———— *Sanction by official superior—District Superintendent of Police—"Inferior ministerial officer"—Criminal Procedure Code 1861, s. 168*—The sanction of a District Superintendent of Police to the prosecution of a charge of giving false information, not to such District Superintendent himself, but to an Assistant District Superintendent, was held to be no sufficient sanction under s 168 of the Criminal Procedure Code, 1861 The words "inferior ministerial officer" referred to public servants of a lower grade than an Assistant Superintendent of Police. QUEEN v OOTUM CHUND

[2 N. W, 287

89 ———— *Criminal Procedure Code, 1861, s 168—Person charged with giving false information under Penal Code, s 182*—Where a person was accused under s 182 of the Penal Code with having given false information to a

the head constable QUEEN v. GRISH CHUNDER SIRKAR . . . 19 W. R., Cr., 33

90. ———— *Sanction given by Judge who afterwards tried the case—Criminal Procedure Code, 1872, s 169*—The Court declined in this case to say under s. 469 of the Code of Criminal Procedure, 1872, that a conviction was bad, because the Judge who tried the case and the Judge who sanctioned the criminal proceedings was the same person. QUEEN v. SUPAL CHUNDER GANGOOLY

[23 W. R., Cr., 16

SANCTION FOR PROSECUTION—*continued.*

5. NATURE, FORM, AND SUFFICIENCY OF SANCTION—*concluded.*

91. ———— *Notice to show cause not a necessary preliminary—Criminal Procedure Code (1882), s. 195.*—An order under s. 195 of the Code of Criminal Procedure sanctioning a prosecution for perjury is not bad by reason of notice to show cause not having been issued previously to the person against whom such order is made. *Krishnanand Das* v. *Hari Bera, I. L. R., 13 Calc., 58,* followed. Masita Ram *v.* Bhukan

[I. L. R., 18 All., 338

92. ———— *Criminal Procedure Code (Act X of 1882), ss. 196, 532—Charge under Penal Code (Act XLV of 1860), s. 124A.*—The accused, who was the editor, proprietor, and publisher of the *Kesari* newspaper, was charged under s. 124A of the Penal Code with exciting and attempting to excite feelings of disaffection to Government by the publication of certain articles, etc., in the *Kesari* in the issue of the 15th June 1897. At the trial an order for the prosecution given by Government under s. 196 of the Criminal Procedure Code in the following form, dated July 26, 1897, was tendered in evidence: "Under the provisions of s. 196 of the Code of Criminal Procedure, Mirza Abas Ali Baig, Oriental Translator to Government, is hereby ordered by His Excellency the Governor in Council to make a complaint against Mr. Bal Gangadhar Tilak, B.A., LL.B., of Poona, publisher, proprietor, and editor of the *Kesari*, a weekly vernacular newspaper of Poona, and against Mr. Hari Narayan Gokhale, of Poona, printer of the said newspaper, in respect of certain articles appearing in the said newspaper, under s. 124A of the Penal Code and any other section of the said Code which may be found to be applicable to the case." Counsel for the accused objected that the order was too vague, and should have specified the articles with reference to which the accused was to be charged. *Held* that the order was sufficient and was admissible, but that, if it were not sufficient, the commitment might be accepted and the trial proceeded with under s. 532 of the Code of Criminal Procedure. *Queen-Empress* v. *Morton, I. L. R., 9 Bom., 288,* followed. Queen-Empress *v.* Bal Gangadhar Tilak . . . I. L. R., 22 Bom., 112

6. POWER TO GRANT SANCTION.

93. ———— **Implied power**—*Criminal Procedure Code, 1861, s. 167—Prosecution of public servant.*—Upon the construction of s. 167 of the Criminal Procedure Code,—*Held* that the section by implication vested in the Court or authority to whom the Judge or other public servant not removeable, etc., was subordinate, the power of sanctioning or directing such prosecution. It did not say that the Government must give the power, but that it shall exist unless limited or reserved. Every Court or authority therefore has it unless there is a limitation. Queen *v.* Kristna Rau . . . 7 Mad., 58

94. ———— **Power to sanction where no particular party is accused**—*Sending case for investigation.*—A Court had power to send a case for investigation to a Magistrate under s. 171 of the Criminal Procedure Code, 1861, where no particular individual had been accused. Essan Chunder Dutt *v.* Prannath Chowdhry W. R., F. B., 71

95. **What Courts can give sanction**—*Criminal Procedure Code, 1872, s. 468—Case settled without evidence.*—The Courts that had jurisdiction to grant a sanction to proceedings under s. 468 of Act X of 1872, where the Court before which the offence was alleged to have been committed, and the Courts to which such Court is subordinate. In the matter of the petition of Kasi Chunder Mozumdar. Jugggut Chunder Mozumdar *v.* Kasi Chunder Mozumdar

[I. L. R., 6 Calc., 440

S. C. Kazi Chundra Mozoomdar *v.* Juggut Chundra Mozoomdar . . 7 C. L. R., 330

96. ———— *Criminal Procedure Code, 1882, s. 195—Offence committed in presence of Court—Preliminary inquiry—Case settled without evidence.*—It is competent for a Civil Court before which a case may have been settled without any evidence being gone into, and which has grounds for supposing the offence of the nature referred to in s. 195 of the Code of Criminal Procedure has been committed before it during the pendency of such case, to make a preliminary enquiry, and thus satisfy itself whether a *primâ facie* case has been made out for granting sanction, and, if so satisfied, to grant sanction for the prosecution of the person alleged to have committed such offence. A sanction granted after such preliminary enquiry and based thereon is not illegal. *In re Kasi Chunder Mozumdar, I. L. R., 6 Calc., 440,* and *Zamindar of Siragiri* v. *Queen, I. L. R., 6 Mad., 29,* dissented from on this point. Shashi Kumar Dey *v.* Shashi Kumar Dey

[I. L. R., 19 Calc., 345

97. ———— **Power of Appellate Court to sanction prosecution of abetment**—*Offence [illegible] lower Court.*—Where an offence was committed against a Court of first instance, the Appellate Court to which it was subordinate was competent to sanction a prosecution under Ch. XI of the Criminal Procedure Code, 1861. Sanction to such a prosecution might be given even if the offence was abetment. In the matter of Ishan Chunder Ghose . . . 15 W. R., 352

98. ———— **Power of Civil Court**—*Criminal Procedure Code, 1861, s. 170.*—A Civil Court had no power to make an order, under s. 170 of the Criminal Procedure Code, sanctioning a prosecution for an offence committed before the Court of the Principal Sudder Ameen on the Small Cause side, that Court not being subordinate to the Civil Court. Ex-parte Mahalingaiyan . 6 Mad., 191

99. ———— *Power of Civil Court to commit for forgery or perjury—Criminal Procedure Code (1882), ss. 195 and 475—Witness*

SANCTION FOR PROSECUTION—*continued*

6 POWER TO GRANT SANCTION—*continued*

of party to proceeding —The power given to a Civil Court under Ch. XXXV of the Code of Criminal Procedure (Act X of 1882) to take action regarding "any offence referred to in s. 195" is not ordinarily restricted in regard to offences relating to documents, to such offences only when committed by a party to the proceeding in which the document was given in evidence It extends also to such offences when committed by a witness of the party IN RE DEVJI VALAD BHAVANI I L R., 18 Bom, 581

100 ——— Power of Mamlatdar—*Sanction of Collector—Prosecution of kulkarni for false report—Criminal Procedure Code 1861, s 167*—The sanction for the prosecution of a kulkarni for making a false report as a public servant required by s 167 of the Code of Criminal Procedure might be given by the Mamlatdar or by the patil to whom such kulkarni was subordinate. The sanction of the Collector was not necessary for that purpose REG v MALHAR RAMCHANDRA 7 Bom, Cr, 64

101. ——— Power of Revenue Court—*Criminal Procedure Code, 1872 ss 468 469, 470*

within the meaning of ss. 468 and 469 of Act X of 1872 Observations by STUART, *C J*, on the "subordination" of Courts of Revenue to the High Court within the meaning of ss 468 and 469 of Act X of 1872 EMPRESS v SABSUKH
[I L R, 2 All., 633

dure Code. EMPRESS v NAROTAM DAS
[I L R., 6 All., 98

103. ——— *Information by accused of offence—Report t a police of falsity of information—Sanction by District Magistrate on police report—Judicial proceeding—Subordination of police officer to District Magistrate—Complaint—Criminal Procedure Code (Act V of 1898), ss 195 and 537—Penal Code (Act XLV of 1860), s 182*—The accused gave certain information to the police, who after investigating the matter reported that the information given was false and constituted an offence under s. 182 of the Penal Code The District Magistrate on this sanctioned the prosecution of the accused, who was convicted and sentenced under that section The accused appealed against the conviction and sentence His appeal was heard and dismissed by the District Magistrate, who had previously sanctioned his prosecution. On revision the accused contended that the District Magistrate, having sanctioned his prosecution on the police report, was not competent to hear the appeal. *Held* that, although police officers in a district were generally subordinate to the District Magistrate the subordination contemplated by s 195 of the Code of Criminal Procedure was not such subordination That subordination contemplated some superior officer of police Nor could the report of the police officer be regarded as a complaint under s 195 of the Code of Criminal Procedure, and therefore no proper sanction had been obtained The defect, however, was cured by s. 537 of the Code of Criminal Procedure, as no failure of justice had been occasioned RAMASORY LALL v QUEEN EMPRESS I L R, 27 Calc., 452
[4 C W. N, 594

104 ——— *Criminal Procedure Code 1872 s 468—Relative positions of a*

DAYAL I L R., 2 All, 205

105 ——— *Criminal Pro-*

(Act X of 1872) a Magistrate of the first class was subordinate to the Magistrate of the district a sanc-

the refusal by the former to give such sanction himself *Semble*—That the Sessions Court had not power to give such sanction IMPERATRIX v PADMANABH PAI I L R., 2 Bom, 384

106 ——— *Criminal Procedure Code, 1872 s 468—Subordinate Judge—District Judge*—For the purpose of sanctioning a criminal prosecution under s 468 of the Code of Criminal Procedure, the Court of the Subordinate
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[I L R, 2 Bom, 481

107 ——— Power of second class Magistrate—*Criminal Procedure Code 1872*

the Code of Criminal Procedure, 1872, could not sanction a prosecution under s 182 of the Penal Code for

giving false information to the station-house officer. QUEEN *v.* VELAYUDAM PILLAI [I. L. R., 6 Mad., 146

108. ———— **Power of Sub-divisional Magistrate**—*Criminal Procedure Code, 1882, s. 195—Sanction to prosecute for false evidence granted by Magistrate on revising calendar.*—A Sub-divisional Magistrate, after perusing the calendar of a case tried by a Magistrate subordinate to him, sent for the record, and passed an order under s. 195 of the Criminal Procedure Code, sanctioning the prosecution of a witness in the case for perjury. *Held* that the order was illegal. QUEEN-EMPRESS *v.* KUPPU [I. L. R., 7 Mad., 560

109. ———— **Power of Small Cause Court Judge**—*Proceeding before Registrar—Forgery—Criminal Procedure Code (Act XXV of 1861), s. 170.*—A specially registered bond was presented before the Small Cause Court Judge for execution, under s. 53, Act XX of 1866, and a decree passed upon it in usual form. Subsequently the Registrar sanctioned the prosecution of the decree-holder, on the ground that the bond was a forgery. The Small Cause Court Judge thereupon, on application made, without taking any evidence or making further inquiry, set aside the decree, and sanctioned the prosecution under s. 170 of the Criminal Procedure Code. *Held* that he was justified in sanctioning the prosecution, but not in setting aside the decree. QUEEN *v.* NAWAB SINGH . 3 B. L. R., A. Cr., 9

110. ———— **Power of Civil Judge**—*Criminal Procedure Code, 1861, ss. 170, 171—Power of Judge to make order where application had been made to Sudder Ameen in whose Court offence occurred, and refused.*—The Civil Judge made an order, under ss. 170 and 171 of the Penal Code, directing the Magistrate to investigate whether certain documents used before the Sudder Ameen were forged, and, if so, by whom. *Held* that he had jurisdiction to make the order, notwithstanding the Sudder Ameen had been applied to and had refused to make a similar order. RADHANAUTH BANERJEE *v.* KANGALEE MOLLAH [Marsh., 407: 2 Hay, 538

111. ———— *Power of District Judge to order prosecution for forgery committed before Munsif—Witness—Criminal Procedure Code (1882), ss. 195 and 476.*—Where a defendant in a suit in the Court of a Munsif applied to the District Judge for sanction under s. 195 of the Code of Criminal Procedure to prosecute a witness who had given evidence in the Munsif's Court in support of a deed, produced as evidence before that Court, which had been found by the Munsif to be a forgery, and the District Judge refused the application, but, purporting to act under s. 476 of the Code, himself ordered the prosecution of such witness,—*Held* that the Judge's order was made without jurisdiction, the offence in respect of which the sanction was directed not having been committed before him nor brought to his notice in the course of a judicial proceeding. IN THE MATTER OF THE PETITION OF MATHURA DAS . . I. L. R., 16 All., 80

112. ———— **Power of Sessions Judge**—*Sanction given on inquiry ordered during trial.*—Where, during an inquiry into allegations that a confession had been made under such circumstances as to render it inadmissible in evidence, the Sessions Judge accorded his sanction to the prosecution for perjury of some of the witnesses who deposed on behalf of the prisoners, the High Court considered such a proceeding improper and eminently calculated to defeat the object of the inquiry. REG. *v.* KASHINATH DINKAR . . . 8 Bom., Cr., 126

113. ———— *Criminal Procedure Code, 1882, s. 195—Sanction to prosecute—"Subordinate Court," What is a—Sanction to prosecute refused by Subordinate Judge in suit over R5,000—Jurisdiction of District Court to grant sanction in cases to which appeal lies to High Court from Subordinate Judge.*—In matters relating to the grant of sanction to prosecute under s. 195 of the Criminal Procedure Code (Act X of 1882), a Court is regarded as "subordinate" to another Court where the latter is the Court to which an appeal from the former ordinarily lies, and an application for such sanction must be made to such superior Court even in those particular cases in which an appeal lies to some other Court, *e.g.*, to the High Court. A decree-holder applied to the first class Subordinate Judge for sanction to prosecute his judgment-debtor under ss. 206 and 424 of the Indian Penal Code for fraudulent concealment of certain moveable property, worth about R10,000, awarded by the decree. This application was rejected by the Subordinate Judge. The District Judge declined to interfere on the ground that, the decree being appealable to the High Court, the High Court alone could deal with the application under s. 195 of the Criminal Procedure Code. *Held* that, though the decree in the present instance was appealable to the High Court, still, as appeals from the Court of the first class Subordinate Judge ordinarily lay to the District Court, the former was subordinate to the latter Court within the meaning of s. 125 of the Criminal Procedure Code. IN RE ANANT RAMCHANDRA LOTLIKAR [I. L. R., 11 Bom., 438

114. ———— *Criminal Procedure Code, s. 195—Sanction for prosecution of witness for perjury by Village Munsif.*—*V* was tried and convicted under s. 193 of the Penal Code for giving false evidence before the Court of a Village Munsif in a suit in which *V* was defendant. The Village Munsif sanctioned the prosecution of *V* under s. 195 of the Code of Criminal Procedure. On appeal, the Sessions Judge acquitted *V* on the ground that a Village Munsif had no power to sanction the prosecution because s. 195 of the Code of Criminal Procedure did not apply. *Held* that the Village Munsif had power to grant the sanction, and that the objection to the conviction was bad in law. QUEEN-EMPRESS *v.* VENKAYYA . . I. L. R., 11 Mad., 735

SANCTION FOR PROSECUTION —*continued*

6. POWER TO GRANT SANCTION—*continued*.

115. ———— *Criminal Procedure Code, s 195—Sanction for prosecution for giving false evidence in a suit under Act XII of 1881 tried by an Assistant Collector of the second class—Sanction granted by Collector—Jurisdiction of Sessions Judge to entertain application to revoke sanction*—A suit for arrears of rent under s. 93, cl. (*a*), Act XII of 1881, was heard by a

meaning of s 195 of the Code of Criminal Procedure 1882, declined to interfere. The witness then applied to the Commissioner of the Division, and that officer, holding that he had no jurisdiction in the matter, also declined to interfere On application by the witness to the High Court for revision of the order of the Court of the District Judge,—*Held* that the Court of a Collector, when granting sanction for prosecution under s 195 of the Code of Criminal Procedure, 1882, in respect of false evidence given in the course of the trial of a rent case from the final decision in which there was no appeal to the Court of the Judge of the district, was still to be deemed subordinate to it within the meaning of that section, and the Court of the District Judge may be taken to be the Court to which appeals from the decisions of the Collector ordinarily lie. HARI PRASAD *v* DEBI DIAL

I. L. R., 10 All., 582

116. ———— *Criminal Procedure Code (Act X of 1882), ss 195, 476—Order sanctioning prosecution—Evidence necessary for such order.*—Before a Court is justified in making an order under s. 476 directing the prosecution of any person, it ought to have before it direct evidence, fixing the offence upon the person whom it is sought to charge, either in the course of the preliminary enquiry referred to in that section or in the earlier proceedings out of which the enquiry arises. It is not sufficient that the evidence in the earlier case may induce some sort of suspicion that the person had been guilty of an offence; but there must be distinct evidence of the commission of an offence by the person who is to be prosecuted. *Queen v Baijoo Lal, I L. R., 1 Calc., 450*, and *In the matter of the petition of Kali Prosunno Bagchee, 23 W R, Cr, 23*, followed. IN THE MATTER OF THE PETITION OF KHEPU NATH SIKDAR. KHEPU NATH SIKDAR *v.* GRISH CHUNDER MUKERJI

I. L. R., 16 Calc., 730

117. ———— *Criminal Procedure Code (1882), s 195—"Subordinate Court"—Jurisdiction of the High Court to revoke or*

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regarded as "subordinate" to another Court where the latter is the Court to which appeals from the former ordinarily lie, *i e*, lie in the majority of cases. Though the decree in the present instance was appealable to "Her Majesty in Council," still, as appeals from the Court of the Recorder of Rangoon ordinarily lay to the High Court, the former was held to be subordinate to the latter Court within the meaning of the section *In re Anant Ramchundra Lothikar, I L R, 11 Bom, 438*, followed MADURAY PILLAY *v* ELDERTON I L R., 22 Calc, 487

118. ———— *Criminal Procedure Code (1882), ss 195, 407, and 476—Application f*
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prosecution and prescribing the Court in which the prosecution should take place—The District Forest Officer applied by letter to the District Magistrate to take such action as he deemed fit against one *S*, who, for reasons stated by the District Forest Officer, was suspected of having abetted the offence of giving false evidence in the course of proceedings instituted on behalf of the Forest Department in the Court of a second class Magistrate The District Magistrate had previously directed that all appeals from the second class Magistrate should be heard by the Deputy Magistrate, but he passed an order himself, whereby he (1) sanctioned the prosecution of *S*, and (2)

s. 195, and he had no jurisdiction to act under s. 476, since the alleged offence was not brought to his notice in the course of a judicial proceeding QUEEN EMPRESS *v* SUBBARAYA PILLAI . I L R, 18 Mad., 487

119. ———— *Inquiry preliminary to exercise of power to grant sanction*—

also be *prima facie* satisfied that the offence has been committed by some definite person or persons against whom proceedings in the Criminal Court are to be taken. *Khepu Nath Sikdar v Grish Chunder Mukerji, I L R., 16 Calc, 730*, and *Chaudhari Mahomed Izarul Huq v. Queen-Empress, I. L R, 20 Calc.,*

SANCTION FOR PROSECUTION —*continued.*

6. POWER TO GRANT SANCTION—*continued.*

349, followed. A Division Bench of the High Court taking the civil business of a particular group has jurisdiction to deal with an order under s. 613 of the Civil Procedure Code made by a Civil Court in any of the districts included in the group. MAHOMED BHAKKU *v.* QUEEN-EMPRESS

[I. L. R., 23 Calc., 532

120. ———————— *Criminal Procedure Code (1882), s. 476—Inquiry before issue of an order under s. 144—Criminal Procedure Code—Judicial proceeding—False evidence.*—A Magistrate, making an inquiry before issue of an order under the Criminal Procedure Code, s. 144, is acting in a stage of a judicial proceeding, and has therefore jurisdiction to take action under s. 476, if he is of opinion that false evidence has been given before him. QUEEN-EMPRESS *v.* TIRUNARASIMHA CHARI

[I. L. R., 19 Mad., 18

121. ———————— *Criminal Procedure Code (1882), s. 195—Power of Court to go outside record.*—A Magistrate, in deciding whether to sanction under Criminal Procedure Code, s. 195, a prosecution for giving false evidence, has power to hold an inquiry and record other evidence besides that in the case before him, in the course of which the offence is supposed to have been committed. QUEEN-EMPRESS *v.* MOTHA

[I. L. R., 20 Mad., 339

122. ———————— *Criminal Procedure Code (1882), s. 195—"Court to which appeals ordinarily lie"—Collector—District Judge.*—For the purpose of granting or revoking a sanction to prosecute refused or granted under s. 195 of the Code of Criminal Procedure, an Assistant Collector of the first class is subordinate to the District Judge. *Hari Prasad* v. *Debi Dial, I. L. R., 10 All., 582*, followed. *Queen-Empress* v. *Ajudhia Prasad, Weekly Notes, All. (1895), 121*, considered. SHANKAR DIAL *v.* VENABLES

[I. L. R., 19 All., 121

123. ———————— *Criminal Procedure Code (1882), s. 195—Sanction for prosecution—Complaint found to be false on an investigation by the police, but without judicial enquiry.*—When a complaint was found to be false on an investigation being made by the police, and thereupon sanction was given under s. 195, Criminal Procedure Code, for prosecuting the complainant for instituting a false complaint,—*Held* that the sanction was bad in law, as it was given without a judicial investigation of the complaint. MUKUNDA BEHARI *v.* BHIKARI CHARAN MAHANTI

[1 C. W. N., 452

124. ———————— *Power of Court to grant sanction with regard to case pending in another Court—Power of Court to dispose of case pending on the file of another Magistrate without withdrawing it.*—*Held* that the Deputy Commissioner had no power to pass an order of dismissal under s. 203, Criminal Procedure Code, in a case which he had transferred to the First Extra Assistant Commissioner, and which was at the time pending in the Court of the latter, nor to grant sanction under the circumstances. KUTAB ALI *v.* EMPRESS . . . . 3 C. W. N., 490

125. ———————— *Penal Code (Act XLV of 1860), s. 182—False information with intent to cause public servant to use his lawful power to the injury of another person—Criminal Procedure Code (Act V of 1898), ss. 195, 476—Judicial proceeding.*—A Deputy Commissioner, upon receiving a petition complaining of various acts of misconduct by the Tahsildar and others of the locality, referred the matter to the Sub-Divisional Magistrate for enquiry and report. The Sub-Divisional Magistrate, in consequence of an opinion formed by him during the enquiry, proceeded to try the petitioner, who was one of the persons who made the petition originally to the Deputy Commissioner, and convicted him under s. 182, Penal Code. *Held* that the Sub-Divisional Officer had no jurisdiction to institute the proceedings or to grant sanction, inasmuch as the complaint which led to this trial was not made to him, but was made to the Deputy Commissioner without whose previous sanction or complaint no trial under s. 182, Penal Code, could be held. That s. 476, Criminal Procedure Code, did not apply to the proceedings, as they were not judicial proceedings. ASMUTULLA *v.* EMPRESS . . . . 4 C. W. N., 366

7. DISCRETION IN GRANTING SANCTION.

126. ———————— Exercise of discretion—*Criminal Procedure Code, 1861, s. 169.*—The discretion vested in a Civil Court under s. 169, Code of Criminal Procedure, of sanctioning a criminal charge of perjury was one that should be most carefully exercised. QUEEN *v.* POOSA RAM 6 W. R., Cr., 11

127. ———————— *Case settled without evidence being gone into—Criminal Procedure Code, 1872, s. 468.*—*Per* GARTH, *C.J.*—Where a case was settled without evidence being gone into, the Court in which the suit was brought, even if it had power to sanction criminal proceedings against any of the parties to such suit under s. 468 of Act X of 1872, was guilty of great impropriety and indiscretion in so doing, inasmuch as it could have had no opportunity of judging of the *boná fides* of the claim or defence. IN THE MATTER OF THE PETITION OF KASI CHUNDER MAZUMDAR. JUGGUT CHUNDER MOZUMDAR *v.* KASI CHUNDER MOZUMDAR

[I. L. R., 6 Calc., 440

S. C. KAZI CHUNDRA MOZOOMDAR *v.* JUGGUT CHUNDRA MOZOOMDAR . . 7 C. L. R., 330

128. ———————— *Proof before Court of commission of offence—Criminal Procedure Code, 1882, s. 195.*—Before granting a sanction to prosecute under s. 195 of the Code of Criminal Procedure, a Court is bound to satisfy itself that an offence has been committed; but it is not bound to

hold any inquiry as to all the persons who may be implicated in such offence IN THE MATTER OF THE PETITION OF GOVINDANNAYAR

[I. L. R., 7 Mad., 224

129. ———— *Proof before Court of commission of offence—Criminal Procedure Code, 1882, s 195—False charge—Penal Code, s 211—Preliminary inquiry*—A prosecution of a charge under s 211 of the Penal Code should not be granted under s 195 of the Criminal Procedure Code as a matter of course, but only when the complainant can satisfy the Court that the interests of justice require a prosecution, and there is a strong *primâ facie* case against the accused. *Held* therefore where *S*, who had been tried before the Court of Session for an offence and acquitted, applied to the Court, in respect of the criminal proceedings which had been instituted against him, for sanction to prosecute *G* for abetment of an offence under s 211 of the Penal Code, and the Sessions Judge granted the sanction, and there was nothing on the record of the criminal case or of the Judge's proceedings to show on what grounds *G* was accused of abetting a false charge, or on what grounds the Judge gave the sanction, that before the Judge gave the sanction he should have satisfied himself, by examination of *S* or other inquiry, whether *S* had sufficient grounds in fact for accusing *G*, and whether there were good *prima facie* grounds for suspecting *G* of abetting a false charge and permitting a prosecution IN THE MATTER OF THE PETITION OF GOURI SAHAI

[I. L. R., 6 All., 114

130. ———— *Criminal Procedure Code, s 195—Penal Code (Act XLV of 1860), ss 193, 463*—In a case in which the Court of first instance finds an instrument to be genuine and the *Judge in appeal happens to take a different view of* the matter, it is not desirable to grant a sanction to prosecute under s 195 of the Criminal Procedure Code. Principle which should guide a Court in sanctioning a prosecution explained. RAM PROSAD ROY *v.* SOOBA ROY . 1 C. W. N., 400

131. ———— *Penal Code (Act XLV of 1860), s 211—Discharge of an accused person—Intentionally bringing a false charge*—Where a Deputy Magistrate refused to grant sanction to prosecute the complainant for bringing a false charge on an application being made to him by the accused persons four months after the date of their discharge, but on an application being made to the Sessions Judge for the purpose, the latter, without giving any notice to the persons against whom the sanction was asked for, made an order sanctioning

[illegible]

application for sanction, and having regard also to the great delay in making the application for sanction and to the fact of the Sessions Judge's order being made without any notice to the petitioners, that order is not a proper order and must be set aside. RAM NATH CHAMAR *v.* RAM SARAN LALL

[1 C. W. N., 529

132. ———— *Criminal Procedure Code (Act X of 1882), s 195—Sanction to prosecute for making false affidavit—Application by person not a party to the suit through enmity*

[illegible]

ceedings for sanction arise An order granting [illegible] ...reful con- [illegible] of justice, [illegible] of individuals It is desirable in most cases that the Court should conclude and have all the facts before it before giving sanction, and that it should not do so at an early stage of the proceedings Where an application for sanction, unsigned and unverified, was filed before a Munsif, purporting to be on behalf of the defendant in a civil suit, who deposed that he

[illegible]

to the suit, out of ill feeling, and thereupon rejected the same and where the sanction was, on appeal, granted by the Sessions Judge without deciding who the real applicant was, or determining the object of [illegible] was [illegible] the

[illegible]

Held that, under the circumstances of the case, sanction was improperly granted by the Judge, and must be revoked IN THE MATTER OF THE PETITION OF CHANDRA KANT GHOSE . 3 C. W. N., 3

133. ———— *Criminal Procedure Code, 1872, s 468—Discretion of High Court to grant sanction after refusal by Small Cause Court*—In a case in which the High Court was asked under s 468, Code of Criminal Procedure,

[illegible]

by s. 468 unless it appeared very clearly that there were strong grounds for granting the sanction. MONEY MOHUN DEY *v.* DINONATH MULLICK

[22 W. R., Cr., 11

134. ———— *Criminal Procedure Code, 1872, s 468—Grounds for sanction—Record*—On an application for sanction to prosecute under s. 468 of the Code of Criminal Procedure, 1872, it was not competent to the Court to go beyond the record in determining whether or not sanction should be granted when the record itself discloses no foundation for the charges. *In re Kasi Chunder Mozumdar, I. L. R., 6 Calc., 440,*

7. DISCRETION IN GRANTING SANCTION —*concluded.*

approved. SANGILI VIRA PANDIA CHINNATAMBIAR *v.* QUEEN. ZAMINDAR OF SIVAGIRI *v.* QUEEN [I. L. R., 6 Mad., 29

135. ——— *Criminal Procedure Code, ss. 195, 435, 478—Forged documents filed in Court—Prosecution ordered by Court as to documents not on record—Power of High Court in revision.*—Certain documents having been put into Court in a suit pending before a District Munsif, but not given in evidence, the District Munsif made an order for the prosecution of the parties who so put them in, on the ground that the documents were forgeries. *Held* that the High Court had power to revise the proceedings of the District Munsif; that the District Munsif was not competent to go beyond the record. *Zamindar of Sivagiri* v. *Queen, I. L. R., 6 Mad., 29*, followed, and that the order was wrong and should be set aside. ABDUL KHADAR *v.* MEERA SAHEB . . . I. L. R., 15 Mad., 224

136. ——— *Criminal Procedure Code, 1882, ss. 202, 203, 476—Penal Code, s. 211—Complaint dismissed without preliminary inquiry into the truth of complaint.*—A Magistrate of the first class, after considering the result of an investigation by a police officer under s. 202 of the Code of Criminal Procedure, dismissed a complaint as false, and passed an order sanctioning the prosecution of the complainant for an offence punishable under s. 211 of the Penal Code, and directed a third class Magistrate to hold a preliminary inquiry, the offence being cognizable by the Court of Sessions only. *Held* that, as there was no application before the first class Magistrate for sanction to prosecute, the order must be taken to be a complaint made by the said Magistrate, and therefore, under s. 476 of the Code of Criminal Procedure, the third class Magistrate had no jurisdiction to hold an inquiry. *Held* also that the first class Magistrate ought to have held a preliminary inquiry under s. 476, in order that the complainant might have an opportunity of showing the truth or *bonâ fides* of the complaint. QUEEN *v.* YENDAVA CHANDRAMMA [I. L. R., 7 Mad., 189

137. ——— *Forgery—Evidence of charge, Necessity for.*—Sanction to a prosecution of a witness or of a party to a suit, for the forgery of a document put forward in course of the trial of that suit, should not be given, without all the testimony available at the trial and bearing on the question of forgery having been first received, and it being satisfactorily proved that there is a *primâ facie* case made out for the charge. *Quære*—Where a document was not put in evidence or dealt with as evidence, but merely had a place on the Judge's file, sanction was necessary. SEETARAM SAHOO *v.* SHEO GOLAM SAHOO . 19 W. R., 183

8. REVOCATION OF SANCTION.

138. ——— **Extent of power of revocation**—*Criminal Procedure Code (Act V of 1898), s. 195.*—The power of revoking given under s. 195 (*b*) is only in respect of sanctions, and not of complaints. QUEEN-EMPRESS *v.* ANKANNA [I. L. R., 23 Mad., 205

139. ——— *Power to revoke sanction—Distinction between a sanction granted to a private person and a complaint by a Court—Criminal Procedure Code (Act X of 1882), ss. 195 and 476.*—S. 195 of the Criminal Procedure Code (Act X of 1882) distinguishes between the sanction granted by a Court to a prosecution by a private individual and a complaint made by the Court itself. A superior Court to which such Court is subordinate may revoke the sanction granted in the former case to the private prosecution, but it has no power in the latter case to set aside a complaint duly made by a subordinate Court. *Ishri Prosad* v. *Sham Lal, I. L. R., 7 All., 871; Queen* v. *Baijoo Lall, I. L. R., 1 Calc., 450;* and *Gyan Chunder Roy* v. *Protab Chunder Dass, I. L. R., 7 Calc., 208,* referred to. QUEEN-EMPRESS *v.* RACHAPPA [I. L. R., 13 Bom., 109

140. ——— *Criminal Procedure Code, 1882, ss. 195, 476—High Court, Jurisdiction of.*—The High Court has no power on appeal to set aside a complaint duly made by a subordinate Court under s. 476 of the Code of Criminal Procedure. QUEEN-EMPRESS *v.* NARAKKA [I. L. R., 13 Mad., 144

But *see* KHEPU NATH SIKDAR *v.* GRISH CHUNDER MOOKERJEE . . . I. L. R., 16 Calc., 730

and IN THE MATTER OF THE PETITION OF MATHURA DAS . . . . . I. L. R., 16 All., 80

where the High Courts of Calcutta and Allahabad, respectively, have held that the High Court has power to set aside such an order on revision.

141. ——— *Criminal Procedure Code (1882), s. 195—Revocation of sanction granted in respect of an offence committed in the course of a civil suit of over R5,000 in value—Valuation of suit.*—Where sanction to prosecute is granted in respect of perjury committed in the course of a civil suit, the valuation of such civil suit is immaterial to the question of the Court to which an application under s. 195 of the Code of Criminal Procedure for revocation of the order granting sanction will lie. GANGA DEI *v.* SHER SINGH [I. L. R., 17 All., 51

142. ——— *Criminal Procedure Code (Act X of 1882), ss. 195, 369—Sessions Judge's power to review his order in proceedings taken to revoke sanction.*—A Sessions Judge, having once refused to revoke a sanction granted by a subordinate Court under s. 194 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to review his order and set aside the sanction. An application to a Sessions Judge for revocation of a sanction granted under s. 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be

8 REVOCATION OF SANCTION—*concluded*

reviewed or revised by him QUEEN EMPRESS *v* GANESH RAMKRISHNA I. L. R., 23 Bom., 50

9 EXPIRY OF SANCTION

143 ———— **Prosecution commenced more than six months after granting of sanction, the period intervening being close holidays**—*Penal Code ss 193 and 471—Criminal Procedure Code (1882), ss 195 and 537—Irregularity in criminal proceedings—Magistrate, Jurisdiction of—General Causes Consolidation Act (I of 1887)*—Sanction to prosecute R for offences under ss 193 and 471 of the Penal Code, committed in the course of a judicial proceeding, was granted on the 5th September 1893, and the prosecution was commenced before the Magistrate on the 7th March 1894 the 4th March being a Sunday, and the 5th and 6th Court holidays R was committed to the Sessions *Held* that as s 7 of Act I of

the proceedings of the Magistrate were without jurisdiction, and the commitment must be quashed *Held* further that s 537 of the Code of Criminal Procedure was not intended to override the provisions of s 195, nor can it be said that there has not been a failure of justice in the prosecution of a person after the period for which the sanction was in force has expired RAJ CHUNDER MOZUMDAR *v* GOUR CHUNDER MOZUMDAR

I. L. R., 22 Calc., 176

10 FRESH SANCTION

144 ———— **Necessity for fresh sanction**—*Postponement of case—Expiration of limitation—Criminal Procedure Code, 1882, s 195*—It is competent for a Court which has granted sanction to a prosecution under s 195 of the Criminal Procedure Code to give a fresh sanction, if the one previously granted has expired by efflux of time The limitation of six months mentioned in s. 195 means that a Magistrate shall not take cognizance of a case under a sanction which is more than six months old, not that the whole prosecution must be completed within that period. *Held* therefore where sanction to a prosecution had been granted under s. 195, and the prosecution had been instituted, and the Magistrate, in consequence of the evidence of the complainant not being procurable, had ordered "the case to be shelved for the present," and the complainant, after the six months mentioned in s. 195 had expired, applied to the Magistrate to re open the proceedings, that it was competent for the Magistrate, having once taken cognizance of the case, and it still remaining on his file undetermined, to take it up again at any moment, and proceed with the prosecution, without fresh sanction IN THE MATTER

10 FRESH SANCTION—*continued*

OF THE PETITION OF GULAB SINGH GULAB SINGH *v* DEBI PROSAD I. L. R., 6 All., 45

145. ———— **Power to grant fresh sanction**—*Fresh sanction granted more than six months after expiry of prior sanction—Grounds upon which such fresh sanction should not be granted—Criminal Procedure Code (Act X of 1882), s 195*—Sanction was granted to prosecute a defendant for forgery and perjury alleged to have been committed by him in a civil suit which was decided against him

been commenced more than six months after the date of the sanction, the charge was dismissed The plaintiff then, on the 20th August 1884 applied for a fresh sanction, which was granted on the 13th April 1885 *Held* that assuming that the Munsif who granted the fresh sanction had power to do so
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shown why a fresh sanction should be given, the Munsif did not exercise a sound discretion in granting such fresh sanction and consequently his order was set aside JOYDEO SINGH *v* HARIHAR PERSHAD SINGH I. L. R., 11 Calc., 577

146 ———— **Power to re-try without fresh sanction**—*Conviction quashed for want of jurisdiction*—Where sanction is given for a prosecution for perjury, and the case tried by an incompetent Court and the conviction quashed on appeal, a competent Court may re try the prisoner upon the subsisting sanction without any order of the Appellate Court by whom the conviction is quashed IN THE MATTER OF THE PETITION OF RAMI REDDI I. L. R., 3 Mad., 48

147. — **Fresh sanction, Grant of, after expiry of six months from the date of the first sanction**—*Criminal Procedure Code (1882), s 195*—If six months expire after the grant of sanction under s 195 of the Criminal Procedure Code, and no prosecution is commenced under it within that time, it is not open to the prosecutor to procure a fresh sanction and to institute proceedings upon such fresh sanction The words "six months *from the date on which the sanction was given*" must be taken to mean six months from the date on which it was given in the first instance, and not from any subsequent date on which the purport of the order might have been repeated The Munsif who tried the suit out of which the application for sanction arose refused to sanction any prosecution, the Munsif who originally sanctioned the prosecution was a different officer; while the Munsif who gave the fresh sanction was neither the Munsif who tried the case nor the Munsif who sanctioned the

10. FRESH SANCTION—*concluded.*

prosecution originally. *Semble*—Under these circumstances, it is extremely doubtful whether the sanction was such as is contemplated by s. 195 of the Criminal Procedure Code. DARBARI MANDAR *v.* JAGOO LAL . . I. L. R., 22 Calc., 573

148. ——— **Sanction not acted upon within six months**—*Criminal Procedure Code (1882), s. 195—Lapse of sanction.*—If an order under s. 195 of the Code of Criminal Procedure lapses, not having been acted upon within six months, that does not bar the granting of fresh sanction on the same grounds if a sufficient reason for the delay be shown. *Darbari Mandar* v. *Jagoo Lal, I. L. R., 22 Calc., 573,* not followed. *Golab Singh* v. *Debi Prasad, I. L. R., 6 All., 45,* and *Baldeo Singh* v. *Prasadi, Weekly Notes, All. (1892), 245,* referred to. MANGAR RAM *v.* BEHARI [I. L. R., 18 All., 358

11. POWER TO QUESTION GRANT OF SANCTION.

149. ——— **Power of Deputy Magistrate**—*Penal Code, ss. 182 and 211—Sanction granted by superior Court.*—A Deputy Magistrate has no power to question an order made by his superior, sanctioning a prosecution under ss. 182 and 211 of the Penal Code. Whether such sanction has been rightly or wrongly given is a question for the accused to raise before a competent Court. EMPRESS *v.* IRAD ALLY . . I. L. R., 4 Calc., 869

S. C. NUSIBUNNISSA BIBEE *v.* ERAD ALI [4 C. L. R., 413

150. ——— **Power of superior Court**—*Criminal Procedure Code of 1872, ss. 468, 469—Finality of order as to sanction.*—*Held* that the sanction referred to in ss. 468 and 469 of Act X of 1872, when given by any of the Courts empowered under the Act, could not be disturbed by a superior Court. *Per* TURNER, *Offg.* C.J., and PEARSON, OLDFIELD, and SPANKIE, *JJ.*—When sanction is refused by one of the Courts, the refusal does not deprive the other Courts of the discretion given to them. BARKAT-UL-LAH KHAN *v.* RENNIE [I. L. R., 1 All., 17

12. WANT OF SANCTION.

151. ——— **Objection to want of sanction.**—*Semble*—The objection to the want of sanction should be taken at the trial. QUEEN *v.* KRISTNA RAU . . . . . . 7 Mad., 58

152. ——— **Jurisdiction of Court without sanction**—*Trial of offence under Criminal Procedure Code, 1872, s. 468.*—A complaint of an offence under s. 465 of the Criminal Procedure Code, 1872, unaccompanied by the requisite sanction, could not be entertained at all by the Magistrate even for the examination of the complainant. ANONYMOUS [8 Mad., Ap., 2

12. WANT OF SANCTION—*continued.*

153. ——— **Institution of case without sanction**—*Discretion of High Court to interfere—Trial finished without sanction.*—Where a charge was instituted without the necessary sanction, and the accused was tried and committed, the High Court refused to interfere, being of opinion that there was nothing to entitle the accused to the benefit of the exceptions in s. 426 of the Criminal Procedure Code, 1861. KIRTI OJHA *v.* RAJKUMAR [7 B. L. R., 29 note

154. ——— **Trial without sanction**—*Criminal Procedure Code, 1882, s. 197—Effect of subsequent sanction.*—Where, after a magisterial inquiry, a European British subject, being a public servant within the meaning of s. 197 of the Criminal Procedure Code (Act X of 1882), was committed for trial to the High Court of Bombay by the Judicial Superintendent of Railways in His Highness the Nizam's Dominions, without any previous sanction having been obtained as required by that section,—*Held* that the proceedings were illegal and without jurisdiction, and that a sanction subsequently obtained was of no effect. QUEEN-EMPRESS *v.* MORTON [I. L. R., 9 Bom., 288

155. ——— *Criminal Procedure Code, 1882, s. 195.*—Where a witness was prosecuted for disobedience to a summons without sanction previously obtained under s. 195 of the Criminal Procedure Code, the High Court refused to interfere, there being no evidence that the want of sanction had occasioned a failure of justice. KALLY MOHUN MOOKERJEE *v.* EMPRESS . 13 C. L. R., 117

156. ——— *Ground for quashing proceedings—Criminal Procedure Code, 1872, ss. 468, 469.*—*Held* by the Judge making the reference (STRAIGHT, *J.*), on the case being returned to him, that the accused persons having been prosecuted without the sanction required by ss. 468 and 469 of Act X of 1872, all the proceedings were invalid, and must be quashed, and the accused must be re-tried, sanction to their prosecution having been obtained. EMPRESS *v.* SABSUKH [I. L. R., 2 All., 533

157. ——— **Inquiry and commitment without sanction**—*Insufficient sanction—Criminal Procedure Code, 1882, ss. 195, 476.*—Where sanction to the prosecution of a person for the offence of using certain evidence known to be false was granted by a Court to which the Court in which such evidence was used was not subordinate, and such sanction did not specify the place in which, and the occasion on which, such offence was committed, and the Court granting the sanction did not make any preliminary inquiry, although such an inquiry was "necessary" in the sense of s. 476 of the Criminal Procedure Code,—*Held* that the indispensable preliminary conditions of s. 195 of the Code being wanting to the prosecution, the committing Magistrate was incompetent to entertain the case,

SANCTION FOR PROSECUTION —continued.

12. WANT OF SANCTION—concluded.

and the commitment was illegal and should be quashed. EMPRESS v NAROTAM DAS [I. L. R., 6 All., 98

158. ——— tion as to or

the discharge of the persons to whom ... did not apply QUEEN v WOODURRUL SINGH [10 W. R., Cr., 24

QUEEN v RAJKISHORE ROY 15 W. R, Cr, 55

159. ——— Proceedings without sanction—*Extortion—Public servant—Criminal Procedure Code, 1861, s. 167.*—Where a complaint charged a person, who was one of the public servants mentioned in s 167 of the Criminal Procedure Code, with committing acts which, if committed by a private individual, would have constituted the *offence of extortion*, it was held that it was not illegal to treat the charge as a charge of extortion, and to proceed with the trial without sanction for the prosecution. REG. v. PARSHRAM KESHAV [7 Bom, Cr, 61

13. NON-COMPLIANCE WITH SANCTION.

160. sanctic cution ... cedure in sanc Crimina servant power to ... the person by whom, and the manner in which, the prosecution was to be preferred and conducted, and a Court had no jurisdiction to entertain a charge against such public servant if preferred otherwise than in accordance with such directions. *Semble*—The Local Government had power in the like case to direct that the accused public servant should be tried before a specific ... diction in that ... tion directed t ... be prosecuted ... prepared to prefer against ... on the record to show, nor did it otherwise appear, ...

161. ——— Non-prosecution under sanction—*Criminal Procedure Code, 1872, s. 468 and s. 142—Power of District Magistrate to proceed without complaint.*—Where sanction had been given under s. 468 of Act X of 1872 by a Deputy Magistrate to a person to prosecute another for bringing a *false* charge, and such sanction was not proceeded under, it was open to the District Magistrate to take up the case under s 142 without complaint EMPRESS v NIPCHA . I. L. R, 4 Calc, 712

162 ——— Effect on sanction of death of grantee—*Criminal Procedure Code, s 195.*—A Civil Court granted sanction under s 195 of the Code of Criminal Procedure to the defendant in a suit to prosecute certain witnesses for perjury The defendant died without having preferred a complaint. His brother thereupon preferred a complaint, and the Magistrate dismissed it under s 253 of the Code of Criminal Procedure, on the ground that the sanction died with the defendant. The Sessions Judge held that the sanction was alive, and directed *the District Magistrate to make further* inquiry under s 437 *Held* that the Sessions Judge was right IN RE THATHAYYA [I L. R, 12 Mad., 47

SAPINDAS.

See HINDU LAW—INHERITANCE—GENERAL HEIRS—SAPINDAS.

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—GRAND DAUGHTER. [I. L. R., 20 Bom., 173

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—STEP MOTHER. [I. L R., 5 Mad., 29
I. L. R., 8 Mad., 132
I. L. R., 11 Bom., 47

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—FEMALES—WIDOW [I. L. R, 2 Bom., 388
I. L. R., 5 Bom, 110
L. R., 7 I. A., 212
I. L. R, 15 Bom., 234
I. L. R., 21 Bom., 739
I. L. R., 18 Mad., 168

Se ... [I. L. R., 9 Calc., 563

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—COUSIN. [I. L R., 17 Calc., 518
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I. L. R., 17 All., 523

See HINDU LAW—INHERITANCE—SPECIAL HEIRS—MALES—HALF BLOOD RELATIVES . . I. L. R., 19 All., 215

See HINDU LAW — STRIDHAN — DESCRIPTION AND DEVOLUTION OF STRIDHAN. [I. L. R., 13 Bom., 505
I. L. R., 17 Bom, 114

SARANJAM.

See GRANT—CONSTRUCTION OF GRANTS.
[I. L. R., 6 Bom., 598
I. L. R., 15 Bom., 247

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION.
[I. L. R., 15 Bom., 247, 510

——— Right to possession and management of—

See LIMITATION ACT, 1877, ART. 111—IMMOVEABLE PROPERTY.
[I. L. R., 15 Bom., 247

See PENSIONS ACT, s. 4.
[I. L. R., 16 Bom., 596

See SERVICE TENURE.
[I. L. R., 17 Bom., 431
L. R., 20 I. A., 50

SAYER COMPENSATION.

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Calc., 8

SCHEDULE.

——— Verification of—

See INSOLVENT ACT, s. 6.
[11 B. L. R., Ap., 34

SCHEDULED DISTRICTS ACT (XIV OF 1874).

See APPEAL IN CRIMINAL CASES—ACTS—ACT XI OF 1846.
[I. L. R., 15 Bom., 505

See APPEAL IN CRIMINAL CASES—ACTS—ACT XXXVII OF 1855.
[I. L. R., 12 Calc., 536

See CRIMINAL PROCEEDINGS.
[I. L. R., 13 Mad., 353

See GUARDIANS AND WARDS ACT, 1890, s. 1 . . I. L. R., 18 Mad., 227

See LOCAL GOVERNMENT.
[I. L. R., 10 Bom., 274

——— Notification under—

See HIGH COURT, JURISDICTION OF—MADRAS—CRIMINAL.
[I. L. R., 14 Mad., 121

——— s. 5.

See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION AND POWERS OF COURT, ETC. I. L. R., 15 Calc., 365

——— s. 6.

See HIGH COURT, JURISDICTION OF—CALCUTTA—CRIMINAL.
[I. L. R., 26 Calc., 874

SCIRE FACIAS, WRIT OF—

——— Suit upon writ — *Non-joinder of plaintiff—Parties.*—Where a *scire facias* was issued under the old Supreme Court procedure at the suit of two, and one of them only sued upon it,—*Held* that the non-joinder of the other was a ground of non-suit, and that the objection might be taken at any stage. ISSUR CHUNDER MUNDUL *v.* HEIRS OF GOLAM ALI . . 1 Ind. Jur., N. S., 249

SEA CUSTOMS ACT (VIII OF 1878).

——— s. 128 — *Trans-shipment — Permit—Lien on goods mentioned in permit.*—A trans-shipment permit issued under s. 128 of the Sea Customs Act (VIII of 1878) does not, like a bill of lading, represent the goods mentioned in it, or give any lien upon or control over them. PREMJI TRIKAMDAS *v.* MADHOWJI MUNJI . I. L. R., 4 Bom., 447

——— s. 197 and s. 8—*Duty and liability of Customs Collector—Negligence of Superintendent of Customs.*—By the negligence of the Superintendent of Sea Customs at the port of C in removing goods to a sea custom warehouse and in keeping them in the warehouse, which, owing to its leaky roof, was utterly unfit for such purpose, the goods were damaged. The owner of the goods sued the Collector of the district, who, under s. 8 of the Sea Customs Act, 1878, has to perform all duties imposed by the Act on a Customs Collector for damages. It was not proved that the Collector was aware of the condition of the warehouse, which had been repaired by the Public Works Department less than a year before. *Held* that the loss was not caused by the neglect or wilful act of the Collector within the meaning of s. 197 of the Sea Customs Act, 1878, and that the Collector was not responsible for the acts of the Superintendent of Sea Customs. COLLECTOR OF GODAVARI *v.* ISUF KASIM NANA
[I. L. R., 7 Mad., 42

SEAMAN, DISCHARGE OF—

See MERCHANT SHIPPING ACT, 1854, ss. 43, 207 . 1 Ind. Jur., N. S., 371
[6 Bom., O. C., 42

SEARCH BY POLICE.

See CRIMINAL PROCEDURE CODES, s. 103.
[I. L. R., 21 Mad., 83

See OPIUM ACT, s. 9.
[I. L. R., 24 Calc., 691

See PRIVATE DEFENCE, RIGHT OF.
[I. L. R., 19 Mad., 349

SEARCH-WARRANT.

See ARMS ACT, 1878, s. 19.
[I. L. R., 15 All., 129

See CALCUTTA POLICE ACT, s. 5.
[I. L. R., 20 Calc., 670

SEARCH-WARRANT—*concluded*

See ESCAPE FROM CUSTODY.
[I. L. R., 19 Mad., 310

See WARRANT 8 W. R., Cr., 74
[I. L. R., 13 Mad., 18
I. L. R., 22 Bom., 949

SEAWORTHINESS.

See BILL OF LADING 8 W. R., 35
[I. L. R., 13 Bom., 571
I. L. R., 19 Bom., 639

See CONTRACT—CONDITIONS PRECEDENT
[2 B. L. R., O. C., 127

See INSURANCE—MARINE INSURANCE.
[5 Moore's I. A., 361
Cor., 5: 2 Hyde, 107

SECOND APPEAL

See CASES UNDER APPEAL

See BURMA COURTS ACT, 1875, s. 27.
[I. L. R., 10 Calc., 946

See CASES UNDER SMALL CAUSE COURT, MOFUSSIL.

See CASES UNDER SPECIAL OR SECOND APPEAL.

SECRETARY OF CHARITABLE INSTITUTION.

——— Suit by, against subscriber.

See RIGHT OF SUIT—SUBSCRIPTION.
[10 C. L. R., 197

SECRETARY OF MUNICIPAL BOARD.

——— Order of—

See STAMP ACT, 1879, SCH. I, ART. 22.
[I. L. R., 19 All., 293

SECRETARY OF STATE.

See PARTIES—PARTIES TO SUITS—GOVERNMENT

——— Liability of—

See CASES UNDER ACT OF STATE.

——— Power of—

See CESSION OF BRITISH TERRITORY IN INDIA . 10 Bom., 37
[I. L. R., 1 Bom., 367
L. R., 3 I. A., 102

——— Privilege of, as to debts.

See CROWN DEBTS
[I. L. R., 12 Calc., 445
5 Bom., O. C., 23

——— Suit against—

See COSTS—TAXATION OF COSTS.
[I. L. R., 15 Mad., 405
I. L. R., 17 Mad., 162

SECRETARY OF STATE—*concluded*

See JURISDICTION—CAUSES OF JURISDICTION—DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN
[1 Hyde, 37
1 Mad., 286
I. L. R., 14 Calc., 256

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION — GOVERNMENT, SUITS AGAINST . I. L. R., 17 Calc., 290

——— Suit by, or on behalf of—

See LIMITATION ACT, 1877, ART. 149
[I. L. R., 19 Mad., 165

1. Liability of Secretary of State for acts of public servants—*Acts done within scope of his authority*—The Secretary of State is only responsible for the acts of public servants done within the scope of his authority SETH DHUNRAJ v. SECRETARY OF STATE FOR INDIA
[1 N. W., 118: Ed 1873, 204

tary of State in Council for India is liable for the damages occasioned by the negligence of servants in the service of Government, if the negligence is such as would render an ordinary employer liable PENINSULAR AND ORIENTAL STEAM NAVIGATION Co. v. SECRETARY OF STATE FOR INDIA
[Bourke, A. O. C., 166. 5 Bom., Ap., 1

SECUNDERABAD, CANTONMENT OF—

See SECURITY FOR COSTS—SUITS
[I. L. R., 21 Calc., 177

SECURITY FOR COSTS.

		Col.
1	SUITS . .	8443
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See LETTERS PATENT, HIGH COURT, CL. 15
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I. L. R., 21 Calc., 473

See PAUPER SUIT—APPEALS 17 W. R., 68
[I. L. R., 3 Mad., 66
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See PRACTICE—CIVIL CASES—SECURITY FOR COSTS.

SECURITY FOR COSTS—*continued.*

See PRIVY COUNCIL, PRACTICE OF—SUBSTITUTION OF APPELLANT. [I. L. R., 17 Calc., 693

See RULES OF HIGH COURT, BOMBAY. [I. L. R., 13 Bom., 458

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT.
[5 B. L. R., Ap., 23, 24
11 B. L. R., 415
14 B. L. R., 180

See SURETY - ENFORCEMENT OF SECURITY.
[9 B. L. R., Ap., 17
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I. L. R., 12 Calc., 402
I. L. R., 15 Calc., 497
I. L. R., 16 Calc., 323

See TRUST . . I. L. R., 5 Calc., 700

1. SUITS.

1. ——— Security by plaintiff—*"Immoveable property"—Leasehold.*—Leasehold property is "immoveable property" within the meaning of s. 34, Act VIII of 1859. ULLMAN *v.* JUSTICES OF THE PEACE FOR CALCUTTA . 7 B. L. R., Ap., 60

2. ——— *Civil Procedure Code (Act XIV of 1882), s. 380—Suit by female.*—The Court has a discretion in exercising the powers conferred by s. 380, Civil Procedure Code, and it will not order the plaintiff to give security unless grounds are shown tending to show that the defence is true. SHAMA SUNDARY DASSEE *v.* RASH BEHARY DHUR [3 C. W. N., 753

3. ——— *Infant female plaintiff or next friend—Civil Procedure Code (Act XIV of 1882), s. 380—Practice.*—Unless in exceptional cases, neither an infant female plaintiff nor her next friend ought to be required to give security for costs. BAI POREBAI *v.* DEVJI MEGHJI [I. L. R., 23 Bom., 100

4. ——— *Practice—Suit for money—Civil Procedure Code (Act XIV of 1882), s. 380; (Act VI of 1888), s. 5.*—A suit to recover certain specified articles and money alleged to have been wrongfully seized and taken possession of by the defendant, or to recover the value thereof, is a suit for money within the terms of the second paragraph of s. 380 of the Civil Procedure Code, the term "suit for money" as there used being wider than a suit for debts. Circumstances under which the Court will order security for costs to be given by a female plaintiff in such a suit. DEGUMBARI DEBI *v.* AUSHOOTOSH BANERJEE I. L. R., 17 Calc., 610

5. ——— *Civil Procedure Code (1882), s. 380—Suit for amount of legacy under will—Suit in nature of administration suit—Discretion of Court—Construction of Statutes—"May"—"Shall."*—The power given to the Court under s. 380 of the Civil Procedure Code to order security for costs is discretionary, and one which the Court ought, or ought not, to exercise according to the

SECURITY FOR COSTS—*continued.*

1. SUITS—*continued.*

circumstances of each case; and unless it is shown that the exercise of the power is necessary for the reasonable protection of the defendant, the Court ought not to interfere. *Degumbari Dabi* v. *Aushotosh Banerjee, I. L. R., 17 Calc., 613,* approved of. Where the plaintiff in a suit against the executors of a will for the amount of a legacy had, on account of the conduct of the defendants, no alternative but to seek the assistance of the Court, and the defendants stated that the assets were not sufficient to pay all the legacies in full, and it was therefore clear that the suit would have to proceed as an administration suit in which the plaintiff could in no event be liable for the defendant's cost,—*Held* that the Court would not order the plaintiff, although she was not in possession of any immoveable property within British India, to give security for the costs of the suit. A plaintiff who is entitled under a will to a beneficial interest in a part of the surplus income derived from immoveable property does not become thereby "possessed of immoveable property" within the meaning of s. 380. IN THE GOODS OF PREMCHAND MOONSHEE. BIDHATREE DASSEE *v.* MUTTY LALL GHOSE [I. L. R., 21 Calc., 832

6. ——— *Plaintiff in another presidency.*—The Court was held to have no power to order a plaintiff resident in another presidency to give security for costs. GAHAN *v.* OWEN . Cor., 11

7. ——— *Inhabitant of foreign territory.*—When an inhabitant of foreign territory sues within British territory, it is imperative on the Court to demand security from him for the payment of all costs that may be incurred by the defendant in the suit, even though the defendant also is a resident of foreign territory. KOROONAMOYEE DEBIA *v.* OOMA CHURN DEB . 12 W. R., 465

8. ——— *Plaintiff residing out of jurisdiction—Suit for administration.*—The provisions of s. 34, Act VIII of 1859, were not intended to apply to a case where the plaintiffs brought a suit for administration and partition of property in which they were entitled to a share, the extent of the share being in dispute. RUSSICK LALL DAY *v.* JADUBRAM DAY . 10 B. L. R., Ap., 25

9. ——— *Civil Procedure Code, 1877, s. 380—"Residence."*—The meaning to be given to the word "residence" in legislative enactments depends upon the intention of the Legislature in framing the particular provision in which the word is used. The "residence" intended in s. 380 of the Civil Procedure Code (Act X of 1877) is residence under such circumstance as will afford a reasonable probability that the plaintiff will be forthcoming when the suit is decided. MAHOMED SHUFFLI *v.* LALDIN ABDULA . I. L. R., 3 Bom., 227

10. ——— *Civil Procedure Code (Act XIV of 1882), s. 380—Wadhwan—British India—Residence.*—*Held* that a plaintiff, being a resident in Wadhwan in Kathiawar and possessed of immoveable property there, could not be required to give security for costs under s. 380 of the

SECURITY FOR COSTS—*continued.*

1. SUITS—*concluded.*

Civil Procedure Code (Act XIV of 1882), Wadhwan being within the limits of British India TRICCAN PANACHAND *v* BOMBAY, BARODA, AND CENTRAL INDIA RAILWAY COMPANY I. L. R., 9 Bom, 244

11. ——— *Civil Procedure* [illegible]

MIRZA *v* ABID ALI MIRZA I. L. R., 21 Calc, 177

12. ——— *Security where plaintiff has left the country.*—Where a plaintiff leaves the country before the case is decided, the proper course for the defendant is to apply to the Court to take security for costs before the case is decided, and if no security be furnished, the Court will pass judgment against the plaintiff by default But if the defendant allows the case to go to judgment, the Court on appeal cannot pass any order calling for security for the costs of the lower Court, which must be left to be realized in execution. IN THE MATTER OF THE PETITION OF CALCUTTA AND SOUTH-EASTERN RAILWAY COMPANY 8 W. R., 217

13. ——— *Suit to enforce trust under a will—Want of personal interest*—In [illegible]

[6 C. L. R., 58

[illegible]

[I. L. R., 14 Calc., 533

2. APPEALS.

15. ——— Security by appellant—*Power of single Judge of High Court to make order for* [illegible]

Affirmed on appeal . Bourke, A. O. C, 40

16. ——— *Power of single Judge of High Court to make order for security*—On a rule nisi for security for the costs of an appeal to be given by a defendant, five-twenty-fourths of the property in dispute having been decreed to him, but subsequently attached under a prohibitory order, cause was shown that the Court had not jurisdiction, and that no reason for the application had been given. *Held* that a single Judge is vested with all the powers of an Appellate Court with reference to the costs of an appeal, that when an appellant resides within the jurisdiction of the Court, he is amenable to its orders as to the costs of an appeal; and that an appellant who has no available property must, if required, give security for the costs of an appeal before proceeding with it. MONOHUR DOSS *v*. KHODRUM BEGUM . . . Bourke, O. C., 110

17. ——— *Appeal from order of Commissioner of Insolvent Court—Civil Procedure Code, 1859, s. 342*—S 342 of Act VIII of 1859 did not apply to appeals from the orders of a Judge sitting as a Commissioner of the Insolvent Court. IN THE MATTER OF RAMSEBAK MISSER

[5 B. L. R., 179

18. ——— *Discretion of* [illegible] *Procedure* [illegible] rred on an [illegible] dure Code, [illegible] be properly exercised, and such discretion is not so exercised when [illegible]

SIRAJ-UL HAQ *v*. KHADIM HUSAIN

[I. L. R., 5 All., 380

19 ——— *Notice of order for security*—The issue of a preliminary notice to show cause why an appellant should not furnish security for the costs of appeal is not equivalent to a demand, and, if the order to furnish security is made in the absence of the appellant, the order must be communicated to him before he can be held to have disobeyed it TIMMU *v* DEVA RAI

[I. L. R., 5 Mad., 285

20. ——— *Civil Procedure Code, 1859, s. 342*—Circumstances under which an order may be made requiring security for costs of appeal to be deposited under s. 342 of Act VIII of 1859. BAMASUNDARI DASI *v*. RAMNARAYAN MITTER . . . . . 7 B. L. R., Ap, 59

21. ——— *Civil Procedure Code, 1859, ss 342, 345, 346—Pauper appellant.*—By the words "before the appellant is called upon to appear and answer" in s. 342, as compared with similar words used in subsequent sections, especially ss. 345 and 346, is meant, not the date mentioned in the notice, but the date on which the appeal is called on to be heard, and the Court has a discretion [illegible] interested in the matter, the case was considered a proper one in which security should be given. JOGENDRO DEB ROYKUT *v*. FUNINDRO DEB ROYKUT [18 W. R., 102

22. ——— *Grounds for order for security—Poverty of appellant—Civil*

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

Procedure Code, 1882, s. 549.—S. 549 of the Civil Procedure Code was never intended by the Legislature to derogate from the right of appeal given by the law to every person who is defeated in a suit in the Court of first instance, and an application should not be granted under that section of which the only ground is a statement that the appellant is not pecuniarily in a position to pay the costs of the appeal if it should be dismissed. *Maneckji Limji Mancherji* v. *Goolbai, I. L. R., 3 Bom., 241,* followed. *Ross* v. *Jaques, 8 M. & W., 13; Seshayyangar* v. *Jainulavadin, I. L. R., 3 Mad., 66;* and *Jogendro Deb Roykut* v. *Funindro Deb Roykut, 'S W. R., 102,* referred to. LAKHMI CHAND *v.* GATTO BAI . . . I. L. R., 7 All., 542

23. ———————— *Grounds for order for security—Civil Procedure Code, 1882, s. 549—Poverty of appellant.*—*Held* by the Full Bench (TYRRELL, *J., dubitante*), without laying down any general rule by which the exercise of the discretion conferred by s. 549 of the Civil Procedure Code should be governed, that the mere fact of the poverty of an appellant, standing by itself, and without reference to any general facts of the case under appeal, ought not to be considered sufficient alone to warrant his being required to furnish security for costs. JIWAN ALI BEG *v.* BASA MAL

[I. L. R., 8 All., 203

24. ———————— *Civil Procedure Code (Act XIV of 1882), s. 549—Poverty of appellant—Ground for ordering security for costs of appeal.*—Under the circumstances of this case, the Court refused an application that the appellant, on the ground that he was a person without means, should give security for the costs of the appeal. HEWETSON *v.* DEAS . I. L. R., 21 Calc., 526

25. ———————— *Civil Procedure Code, 1882, s. 549—Poverty of appellant—Vexatious conduct—Ground for requiring security.*—An appellant (residing within the jurisdiction) who has been ordered to pay the costs of the original hearing and has not done so cannot be required to furnish security for such costs before he is allowed to prosecute his appeal, unless his conduct be shown to be vexatious—that is, such as indicates a wilful determination on his part not to obey the order of the Court. His not paying, if it be caused by inability to pay, is not vexatious. AHMED BIN ESSA KALIFFA *v.* ESSA BIN KALIFFA . I. L. R., 13 Bom., 458

26. ———————— *Civil Procedure Code (Act XIV of 1882), ss. 549 and 647, Explanation—Appeal by defendant against the order under s. 244, granting execution—Appellant required to give security for the costs of the appeal and of the original suit.*—The Court can require an appellant from an order made under s. 244 of the Civil Procedure Code (Act XIV of 1882) in execution of a decree to give security for the costs of the appeal and of the original suit. DAGDU JAITRAM *v.* CHANDRABHAN

[I. L. R., 24 Bom., 314

27. ———————— *Civil Procedure Code, 1859, ss. 106, 342—Assignee substituted for plaintiff.*—Under s. 342, Act VIII of 1859, the High Court had discretion to demand security for costs from an appellant, if it saw fit to do so, at any time before the hearing of the appeal. Where an assignee who had been substituted for the plaintiff under s. 106 declined to furnish security for the costs within such reasonable time as the Court ordered, it was held that the defendant might within eight days after such neglect or refusal plead the bankruptcy or insolvency of the plaintiff as a reason for abating the suit. HEERALALL SEAL *v.* CARAPIET . 13 W. R., 431

28. ———————— *Appellant out of jurisdiction.*—*Quære*—Whether in a case in which the appellant is not residing out of the British territories in India, the High Court has authority to demand security for costs from the appellant after the issue of summons, *i.e,* notice of the appeal. HUFAZUTTOOLAH CHOWDRY *v.* HUMEEDHUR ROHMAN . . . . . 6 W. R., Mis., 123

29. ———————— *Beng. Reg. XIV of 1829, s. 2, cl. 1—Inhabitant of foreign territory.*—Bengal Regulation XIV of 1829, s. 2, cl. 1, enacted that every person being an inhabitant of a foreign territory should be required to furnish security for costs; such security to be furnished by a plaintiff or appellant within six weeks of the date on which his plaint or appeal was filed; and that, unless such security be so furnished, the suit of such person, if plaintiff, should not be proceeded with or appeal admitted unless he had furnished the necessary security to cover costs in the appeal. In an appeal to the Sudder Court from a decree of the Zillah Court by a party then temporarily absent in England, but having real estates and factories within the jurisdiction of the Court, no security was furnished by the appellant's vakil within six weeks after lodging the appeal. The respondent in the first instance put in an answer to the grounds of appeal filed by the appellant, but afterwards filed a petition for dismissal for non-compliance with the requirements of Bengal Regulation XIV of 1829, s. 2, cl. 1, contending that the appellant was a resident of a foreign territory, and had not furnished security within six weeks as required by that regulation. The Sudder Court held that such security ought to have been furnished by the appellant, who, residing in England *pendente lite,* was to be considered as resident in a foreign territory within the meaning of the regulation, and dismissed the appeal. *Held* by the Judicial Committee (remitting the suit to India for trial) that the Sudder Court had not, by Regulation XIV of 1829, any power *ex mero motu* to dismiss the appeal, (1) as the appellant was guilty of no default under that regulation, not having been called upon by the respondent or the Court to furnish security for costs; (2) as the appellant was not guilty of laches in not voluntarily offering security, the regulation providing only that a suit or appeal should not be proceeded with until security was furnished. *Semble*—The putting in an answer to the appeal before objecting to the want of security for costs operated as a waiver by the respondent of the want of security for costs required by Bengal Regulation XIV of 1829, s. 2, cl. 1. *Quære*—Whether Act III of

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

30. —— —— *Grounds for ordering security*—Cause being shown on a rule *nisi* for an order for security to be given by the appellant for the costs of an appeal (similar orders having been previously made on the application of other defendants), it appeared that an unusual number of defendants had been joined in the suit, which had been withdrawn on a previous occasion when nearly tried out, and that the plaintiff, who sued as a relator, was poor and resided out of the jurisdiction, and had not paid interlocutory costs, for which an attachment had issued *Held* that an appellant will not be ordered to give security for costs previously incurred, that the fact of similar applications having been granted in the suit, the poverty of the appellant, and the fact of his dwelling out of the jurisdiction, as well as the peculiar circumstances of the case, non-payment of interlocutory costs, a former withdrawal of the suit, and the joining of an unusual number of defendants, are grounds for granting an order for security to be given by an

[Bourke, A. O C, 40

Confirming the judgment in the same case in

[Bourke, O C, 119

31. —— *Continuation of order made against plaintiff for security—Civil Procedure Code, 1859, s. 34*—A plaintiff who resided out of India paid a sum of money into Court as security for costs under s. 34 of Act VIII of 1859. He subsequently obtained a decree against the defendant, and the defendant appealed against that decree *Held* that the defendant was not entitled to an order detaining in Court, pending the appeal, the money which had been paid in under s 34 FLEMING v SHEARMAN . . . 4 B. L. R., O. C., 92

See IN RE DITTA HARAKMAN SINGH

[3 B L. R., F. B., 45

S. C. DITTIA HURRUCKMAN SINGH v. MODHOOSOODUN PINE . 12 W. R., F. B, 16

32. —— *Discretion of Court to refuse security—Civil Procedure Code (Act XIV of 1882), s. 549*—An original Court rejected, as insufficient, security offered for the purpose of conforming to an order of the High Court under s. 549, Civil Procedure Code, and refused to receive other security offered in lieu after the time fixed by the order had expired This was affirmed by the High Court. *Held* that, as the High Court had a discretion to enlarge the time allowed for finding security and to accept other security in lieu of that rejected or to refuse to do either, it had, under these circumstances, judicially exercised that discretion in refusing RAJAB ALI v. AMIR HOSSEIN . I. L. R., 17 Calc., 1

SECURITY FOR COSTS—*continued*

2 APPEALS—*continued.*

33. —— *Civil Procedure Code, 1877, s 549—Extension of time for giving security—Procedure*—Where the Appellate Court demands from an appellant security for costs, the Court may extend the time within which it orders such security to be furnished, but if no application is made for such extension of time, and such security is not furnished within the time ordered, it is imperative on the Court to reject the appeal HAIDRI BAI v. EAST INDIAN RAILWAY COMPANY

[I. L. R, 1 All, 687

34. —— *Civil Procedure Code*
perm
defa
imperative, the time cannot be extended after the

[I. L. R., 11 Mad., 190

35 —— *Civil Procedure Code (Act XIV of 1882), s 549—Appeal rejected for want of security—Extension of time for giving security—Discretion of Court*—The proper construction of s 549 of the Civil Procedure Code is that, where an appellant has been ordered to furnish security within a certain time, and that order has not been complied with, and no application has been made to extend the time within the period allowed, the Court is bound to reject the appeal. BUDRI NARAIN v SHEO KOER I. L R, 11 Calc, 716

In the same case on appeal to the Privy Council, it was held that, where the High Court, under s 549, Civil Procedure Code, has demanded security from an appellant, it has power to extend the time for complying with this order on application made, as well after as before the time first fixed has expired,
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. Calc, 512
[L. R., 17 I. A., 1

36. —— *Civil Procedure Code (Act XIV of 1882), s 549—Rejection of appeal—Discretion of Appellate Court to extend time for furnishing security*—The security for the respondents' costs which the High Court had demanded under s 549 not having been furnished within the time fixed, and the Court, in the exercise of its discretion, having refused to extend the time, the appeal was rejected under that section *Held* that this was not a case for interference MODHUSUDAN DAS v. ADHIKARI PRAPANNA

[I. L. R., 17 Calc, 516

S C MODHUSUDAN DOSS v. KRISHNA PRAPANNA RAMANUJ DOSS . . . L. R., 17 I. A, 9

SECURITY FOR COSTS—*continued.*

2. APPEALS—*continued.*

37. ———— *Extension of time for furnishing security—Exceptional circumstances—Civil Procedure Code (1882), s 549.*—The appellant applied for an extension of the time for giving security for the costs of the appeal on the ground that, in the exceptional state of things in Bombay caused by the prevalence of the plague, she had been unable to raise the money required. *Held* that under the circumstances the application should be granted. S. 549 of the Civil Procedure Code (Act XIV of 1882) does not absolutely preclude such an order if the circumstances render it just to make it. The Court cannot lay down a hard-and-fast rule that in no case after the time for giving security has expired can an appellant be allowed further time. JUMNABAI *v.* VISSONDAS RUTTONCHUND

[I. L. R., 21 Bom., 576

38. ———— *Agreement to deposit security—Failure to make deposit.*—An order was made by the Court (pursuant to an agreement between the parties after a decree for the plaintiff) that the defendant who had appealed should pay into Court, to the credit of the cause, a certain sum of money for decree, costs, etc., including a sum of money for costs to be incurred on appeal. On an application by the plaintiff that the case be struck off for default of deposit, and that the defendant pay costs already incurred at the time of the application, it was ordered that the defendant should deposit a sum to cover costs of the future appeal, and in default that the case should be struck off, although the summons to show cause was not in point of form to that effect. ELIAS *v.* CHUCKERBUTTY

[1 Ind. Jur., N. S., 223

39. ———— *Civil Procedure Code, s. 549—Security for costs—Amount of security not fixed—Dismissal of appeal—Practice.*—S. 549 of the Civil Procedure Code contemplates an order by which some ascertained amount of security is required. The last paragraph of the section seems to contemplate that, on failure to furnish security within the time fixed, an order for rejecting the appeal should be obtained from the Court that gave the order to furnish security. Upon the application of the respondent in a second appeal pending before the High Court, an order was passed requiring the appellant to furnish security for the costs of the appeal, and to lodge such security at any time before the hearing. This order purported to be made under s. 549 of the Civil Procedure Code, but neither the application nor the order stated the amount of the security required. At the hearing of the appeal, no security having been lodged, the respondent objected that, with reference to the terms of s. 549, the Court had no option but to dismiss the appeal. *Held* that the objection had no force, no such order as was contemplated by s. 549 having been made. *Held* also that the proper course was to have applied to the Judge who passed the order for security, at any time before the case came on for hearing, for the rejection of the appeal, and that it was too late at the hearing to ask the Court to reject the appeal. THAKUR DAS *v.* KISHORI LAL . . I. L. R., 9 All., 164

SECURITY FOR COSTS—*concluded.*

2. APPEALS—*concluded.*

40. ———— *Form and contents of order for security for costs—Omission to state amount—Practice—Civil Procedure Code (1882), s. 549.*—Where a Court acting under s. 549 of the Code orders an appellant to give security for costs, it is not necessary that any specific sum for which security is to be given should be named in the order for security. It is sufficient for the order to direct the appellant to furnish security within a time to be stated "for the costs of the appeal" or "for the costs of the original suit," or "for the costs of the appeal and of the original suit." *Thakur Das* v. *Kishori, I. L. R., 9 All., 164,* overruled on this point. LEKHA *v.* BHAUNA

[I. L. R., 18 All., 101

SECURITY FOR GOOD BEHAVIOUR.

See APPEAL IN CRIMINAL CASES—CRIMINAL PROCEDURE CODES.

[I. L. R., 9 Calc., 878
22 W. R., Cr., 68

See SENTENCE—IMPRISONMENT—IMPRISONMENT GENERALLY . 3 N. W., 126
[I. L. R., 1 All., 666

1. ———— Transfer of proceedings—*Criminal Procedure Code (1882), ss. 110 and 526.*—Proceedings under s. 110 of the Code of Criminal Procedure cannot be transferred to any Court outside the district within which such proceedings have been lawfully instituted. IN THE MATTER OF THE PETITION OF AMAR SINGH . . I. L. R., 16 All., 9

2. ———— Discretion of Court, Exercise of—*Criminal Procedure Code, 1872, ss. 505, 506—Deposit of cash in lieu of security bond for good behaviour.*—The powers given by ss. 505 and 506 of Act X of 1872 should be exercised with extreme discretion: the former of those sections was not intended to apply to persons of "by no means a reputable character." EMPRESS *v.* KALA CHAND DASS . I. L. R., 6 Calc., 14: 6 C. L. R., 128

3. ———— Person of violent or turbulent character—*Criminal Procedure Code, 1861, s. 297.*—S. 297 of the Code of Criminal Procedure, 1861, did not refer to persons of a violent or turbulent character. IN RE NARAIN SOOBOODHI

[6 W. R., Cr., 6

4. ———— Persons convicted of theft—*Criminal Procedure Code, 1861, s. 295—Theft.*—S. 295 did not apply to persons convicted and punished for theft. QUEEN *v.* KUNEE SONAR

[7 W. R., Cr., 57

5. ———— Habitual offenders—*Acts committed by persons in performance of duties as burkandazes in zamindari—Habitual association—Joint trial—Code of Criminal Procedure (Act V of 1898), ss. 110, 112, 117, 118, and 537.*—Certain burkandazes employed at the kutchery of the Bijni estate, who were alleged to have committed acts of extortion and other acts of oppression in the perform-

SECURITY FOR GOOD BEHAVIOUR
—continued.

mission of offences involving a breach of the peace.

sidering that there was habitual association between these persons in regard to the first and second grounds, there certainly would be no such connection between them in regard to their characters so as to make them dangerous persons and thus to render their being at large without security hazardous to the community, and that proceedings should have been separately

and not for the punishment of offences. HARI TELANG *v.* QUEEN EMPRESS . I. L. R., 27 Calc., 781

HARI TELANG *v.* EMPRESS . 4 C. W. N., 531

6. ——— Jurisdiction of Magistrate —*Person not residing within his jurisdiction—Reputation—Code of Criminal Procedure (Act V of 1898), s. 110.*—It is only when a person within the limits of a Magistrate's jurisdiction, that is, who is residing within the limits of such jurisdiction, is found to be a person of the description given in s. 110 of the Code of Criminal Procedure, that the Magistrate can take action under that section, and it is not contemplated that the Magistrate in such a case should issue a warrant so as to pursue the person concerned into another jurisdiction. Under the terms of s. 110 of the Criminal Procedure Code, the reputation which the person is found to have means the reputation of that person in the neighbourhood in which he resides. KETABDI *v.* QUEEN EMPRESS

[I. L. R., 27 Calc., 993

7. ——— Persons not proved to have committed crime—*Criminal Procedure Code, 1872, s. 505.*—The exercise of the power given by s. 505 of the Criminal Procedure Code was not confined to cases in which positive evidence of the commission of crime is forthcoming against the persons charged. IN RE PEDDA SIVA REDDI

[I. L. R., 3 Mad., 238

SECURITY FOR GOOD BEHAVIOUR
—continued.

8. ——— Absconded offender arrested without summons—*Criminal Procedure Code, 1861, s. 306.*—Where an accused person was arrested as an absconded offender, and, without evidence being gone into on that charge, an inquiry was made into his mode of livelihood, without any summons being issued under s. 306 of the Criminal Procedure Code, such proceedings were held to be irregular. QUEEN *v.* HUTTOOA . 3 N. W., 2

9. ——— Opportunity to make defence—*Information of accusation to accused—Criminal Procedure Code (Act X of 1882), ss. 109, 110, 112.*—Before a Magistrate can pass an order directing an accused to furnish bail and security for his good behaviour, it is necessary that the accused should be given an opportunity of entering into his defence, and that he should be clearly informed of the accusation which he has to meet. QUEEN-EMPRESS *v.* ISWAR CHANDRA SUR

[I. L. R., 11 Calc., 13

10. ——— Right to be heard by pleader—*Accused person liable to imprison-*

Judge under s. 123 of the Code of Criminal Procedure,

of giving security. NAKHI LAL JHA *v.* QUEEN-EMPRESS I. L. R., 27 Calc., 656

11. ——— Requisites for order—*Evidence satisfying Magistrate of bad character of accused—Criminal Procedure Code, 1861, s. 296.*—To justify a Magistrate in taking action under s. 296 of the Criminal Procedure Code, it was held that there must be evidence before him legally sufficient to establish the fact that the person charged is a person of the character described in the section. QUEEN *v.* BUDLA . . . 2 N. W., 455

12. ——— Information on which Magistrate may act—*Information showing that a breach of the peace is imminent—Order to furnish security for good behaviour for three years—Arrest of accused—Inquiry as to truth of information—Proof of information—Statements of persons not called as witnesses—Criminal Procedure Code, 1882, ss. 112, 114, 117.*—Conversations out of Court with persons, however respectable, are not legal or proper material upon which Magistrate should adopt proceedings under s. 107 or s. 110 of the Criminal Procedure Code. The information to be required by a Magistrate, before issuing an order under s. 112, may to some extent be of a hearsay and general description, but when the party to whom the order is directed appears in Court in obedience thereto, the inquiry must be conducted on the lines laid down in s. 117. It is not because a man has a bad character that he is therefore necessarily liable to be called upon for sureties of the peace or for good behaviour

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inued.

ıst be satisfactory evidence in the one case as done something, or taken some step, that an intention to break the peace or that is occasion a breach of the peace; and in the ıt he is within the category of persons men- s. 110, the determination of which question ays be guided by the considerations pointed *npress* v. *Nawab, I. L. R., 2 All., 835.* A :e is not competent, upon information that the likelihood of a breach of the peace, to s. 110 of the Criminal Procedure Code, and ether *ultra vires* for him to demand security years in such a case. In ordering the person under s. 114 of the Criminal Pro- ıde, the Magistrate must act on recorded in- ; it is not enough for him to express a t such a course is necessary. Not only must reason to fear the commission of a breach :ace," but "that such breach of the peace prevented otherwise than by the immediate uch person." EMPRESS v. BABUA

[I. L. R., 6 All., 132

——— *Criminal Proce- e, 1861, s. 306—Information of police.*— uiry under s. 306 of the Code of Criminal as to proceedings against persons required curity for good behaviour, a Magistrate had to use the information which the police obtained as evidence in the case. QUEEN KISHEN . . 11 W. R., Cr., 35

——— **"Show cause"**—*Criminal e Code, ss. 107, 112, 117, 118, 239—Burden —Joint inquiry—Opposing factions dealt ıne proceeding—Nature and quantum of necessary before passing order for secu-* ıon general principles, every person is en- the absence of exceptional authority con- the law to the contrary effect, when re- the judiciary either to forfeit his liberty his liberty qualified, to insist that his case ied separately from the cases of other per- larly circumstanced. Where an order has ed under s. 107 of the Criminal Procedure iring more persons than one to show cause should not severally furnish security for he peace, the provisions of s. 239 read with applicable, subject to such modifications as section indicates, and to such procedure as ıcies of each individual case may render ad- the interests of justice. A joint inquiry in f such persons is therefore not *ipso facto* nd even in cases where one and the same gs taken by the Magistrate under ss. 107, and 118 improperly deals with more per- one, the matter must be considered upon dual merits of the particular case, and would ımount to an irregularity which, accord- particular circumstances, might or might ered by the provisions of s. 537. *Queen-* v. *Nathu, I. L. R., 6 All., 214,* and *Em- Batuk, Weekly Notes, All., 1884, p. 51,* re- An order passed by a Magistrate under

SECURITY FOR GOOD BEHAVIOUR
—continued.

ss. 107 and 112 of the Criminal Procedure Code, requiring any person to "show cause" why he should not be ordered to furnish security for keeping the peace, is not in the nature of a rule *nisi* implying that the burden of proving innocence is upon such person. The onus of proof lies upon the prosecution to establish circumstances justifying the action of the Magistrate in calling upon persons to furnish security. *Dunne* v. *Hem Chunder Chowdhry, 4 B. L. R., F. B., 46,* and *Queen* v. *Nirrunjun Singh, 3 N. W., 431,* referred to. Where, according to the nature of the information received by the Magistrate, there were two opposing parties inclined to commit a breach of the peace,—*Held,* applying by analogy the principles relating to the trial of members of opposing factions engaged in a riot, that the Magistrate acted irregularly in taking steps against both parties jointly and in holding the inquiry in a single proceeding. Such a procedure is not *ipso facto* null and void, but only where the accused have been prejudiced by it. *Empress* v. *Lachan, Weekly Notes, All., 1881, p. 28,* and *Hossein Buksh* v. *Empress, I. L. R., 6 Calc., 96,* referred to. In proceedings instituted under s. 107 of the Criminal Procedure Code against more persons than one, it is essential for the prosecution to establish what each individual so implicated has done to furnish a basis for the apprehension that he will commit a breach of the peace. In holding such an inquiry it is improper to treat what is evidence against one of such persons as evidence against all, without discriminating between the cases of the various persons implicated. *Queen-Empress* v. *Nathu, I. L. R., 6 All. 214,* referred to. Although in an inquiry under s. 117 the nature or quantum of evidence need not be so conclusive as is necessary in trials for offences, the Magistrate should not proceed purely upon an apprehension of a breach of peace, but is bound to see that substantial grounds for such an apprehension are established by proof of facts against each person implicated, which would lead to the conclusion that an order for furnishing security is necessary. What the nature of the facts should be depends upon the circumstances of each case, but where the nature of the Magistrate's information requires it, overt acts must be proved before an order under s. 118 can be made, and such an order cannot be passed against any person simply on the ground that another is likely to commit a breach of the peace. *Queen* v. *Abdool Huq, 20 W. R., Cr., 57; Goshain Luchman Pershad Pooree* v. *Pohoop Narain Pooree, 24 W. R., Cr., 30; Rajah Run Bahadoor* v. *Ranee Tillessuree Koer, 22 W. R., Cr., 79;* and *In the matter of Kashi Chunder Dos, 10 B. L. R., 441 : 9 W. R., Cr., 47,* referred to. QUEEN-EMPRESS v. ABDUL KADIR . I. L. R., 9 All., 452

15. ——— **Ground for ordering security**—*Criminal Procedure Code, 1872, s. 505.—Evidence of character.*—Act X of 1872, s. 505, enabled the Magistrate to require security for good behaviour, whenever it appeared to him, from the evidence as to general character adduced before him that any person was by repute a robber, house-breaker or thief, or a receiver of stolen property, knowing the

SECURITY FOR GOOD BEHAVIOUR —*continued.*

25. ———— Statement of grounds for order—*Opportunity to comply with order—Criminal Procedure Code, 1872, s. 505.*—On a requisition from the High Court, a Magistrate is bound to state the grounds upon which he fixed the amount of security. A person from whom security for good behaviour is demanded should have a fair chance afforded him to comply with the required conditions of security. EMPRESS *v.* DEDAR SIRCAR

[I. L. R., 2 Calc., 384 : 1 C. L. R., 95

26. ———— Order for surety to pledge rights in land—*Illegal order.*—An order by a Magistrate requiring security for good behaviour which directed that the surety should pledge all his proprietary rights in land worth R200 was held to be illegal. QUEEN *v.* GANNI . . 7 N. W., 249

27. ———— Reference to Sessions Judge for confirmation of order when person is unable to give security—*Criminal Procedure Code (Act V of 1898), ss. 110, 123—Statement of grounds for order.*—The Sessions Judge, in confirming the order of a Magistrate under s. 123 of the Code of Criminal Procedure in regard to the imprisonment of a person in consequence of his being unable to furnish the necessary security, is bound to find a special ground on which the order is passed, having special reference to s. 110 of that Code. It is not sufficient where he only finds in general terms that it is for the interests of the community at large that such person should be bound once to be of good behaviour. NAKHI LAL JHA *v.* QUEEN-EMPRESS

[I. L. R., 27 Calc., 656

28. ———— Order with arbitrary condition imposed — *Criminal Procedure Code, 1872, ss. 505, 516—Sureties.*—In making an order for security to keep the peace under s. 505, Criminal Procedure Code, 1872, a Magistrate had no right to impose an arbitrary condition not essential to restrain a party from the infringement of the law, *e.g.*, a condition requiring the accused to furnish two sureties, being persons of respectability and substance, not related to him, and residing within one mile of his house. The ground on which a Magistrate has power to refuse to accept any surety under s. 516 must be a valid and reasonable ground. IN THE MATTER OF THE PETITION OF NARAIN SOOBODDHEE

[22 W. R., Cr., 37

29. ———— No conditions and limitations can be imposed upon persons ordered to give security under s. 118 of the Code. IN THE MATTER OF JHOJHA SINGH *v.* QUEEN-EMPRESS

[I. L. R., 24 Calc., 155

30. ———— Ground for refusing surety —*Criminal Procedure Code (Act V of 1898), s. 123, cl. (2)—Pleader whether he may be heard in a reference under that section.*—A Sessions Judge is bound to hear a pleader who may appeal on behalf of a person in a case referred to him under s. 123, cl. (2), of the Criminal Procedure Code. *Jhoja Singh* v. *Queen-Empress, I. L. R., 23 Calc., 493,* referred to. A Magistrate cannot refuse to accept a surety on the ground that he lives at a distance from the accused. ABINASH MALAKAR *v.* EMPRESS 4 C. W. N., 797

31. ———— Object of demanding security—*Criminal Procedure Code (Act X of 1882), ss. 110 et seq.—Discretion of Magistrate in accepting or refusing sureties tendered.*—The object of requiring security to be of good behaviour is not to obtain money for the Crown by the forfeiture of recognizances, but to insure that the particular accused person shall be of good behaviour for the time mentioned in the order. It is therefore reasonable to expect and require that the sureties to be tendered should not be sureties from such a distance as would make it unlikely that they would exercise any control over the man for whom they were willing to stand surety. *In the matter of the petition of Narain Sooboddhee, 22 W. R., Cr., 37,* not followed. QUEEN-EMPRESS *v.* RAHIM BAKHSH

[I. L. R., 20 All., 206

32. ———— Order for security and imprisonment in default—*Illegal order—Criminal Procedure Code, 1861, ss. 296, 301.*—Where a Magistrate required security from persons for their good behaviour, under s. 296 of the Criminal Procedure Code, and in default sentenced them to six months' rigorous imprisonment,—*Held* that the order was illegal, s. 301 requiring that they should be committed to prison until they furnish the security demanded. In fixing the amount of security, the Magistrate should not go beyond a sum for which there is a fair probability of the defendants being able to find security. ANONYMOUS

[4 Mad., Ap., 47

33. ———— *Criminal Procedure Code (Act X of 1882), s. 118—High Court's power of interference when the amount of security is excessive—Magistrate's discretion, Exercise of.* —A Magistrate ordered the accused to execute a bond for R500 for his good behaviour for one year and to furnish two sureties for the like amount. The accused failed to furnish the required security, and was sent to prison. The High Court, being of opinion that the amount of the required security was excessive and that the Magistrate had not exercised a proper discretion in the matter, interfered in the exercise of its revisional jurisdiction, and reduced the amount. QUEEN-EMPRESS *v.* RAMA

[I. L. R., 16 Bom., 372

34. ———— Power of Magistrate to cancel security-bond once accepted—*Criminal Procedure Code (Act X of 1882), ss. 109, 122, 125.*—When a surety offered by a person for good behaviour has once been accepted, a Magistrate has no power subsequently to cancel the security-bond, though he might be of opinion that such surety is an unfit person. EMPRESS *v.* RAM LAL ACHARJEA

[1 C. W. N., 394

35. ———— Second order for security without further proof—*Criminal Procedure Code, 1861, Ch. XIX.*—Where a person is confined, in default of giving security for his good behaviour, under Ch. XIX of the Code of Criminal Procedure,

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—*continued.*

a second security cannot be demanded after the expiration of the first term of confinement, except on some new proof of bad livelihood, or that the person is not capable of following an honest calling IN RE JUSWUNT SINGH

[1 Ind. Jur., N. S, 301: 6 W. R, Cr., 18

See MAHOMED ABDUL BARI v. EMPRESS
[4 C. W. N., 121

36. ——— Further proceedings under s. 110 of Code of Criminal Procedure—*Fresh information—Accused person—"Discharge"—Criminal Procedure Code, s. 437.*—A further inquiry

[illegible]

of the Code clearly refer to a person accused of an offence who has been discharged from a charge of that offence within the terms of Ch. XIX of the Code QUEEN-EMPRESS v IMAN MUNDAL

[I. L. R., 27 Calc, 662

37. ——— Form of security bond—*Criminal Procedure Code, 1861, ss 305, 306—Forfeiture of bond*—Where sureties who were required to show cause, under s 305 of the Code of Criminal

[illegible]

pieces of paper instead of one IN THE MATTER OF THE PETITION OF BRINDABUN CHUNDER DASS IN THE MATTER OF THE PETITION OF TARINEE CHURN MOZOOMDAR . . . 19 W. R., Cr, 29

38. ——— Procedure—*Power of Sessions Judge after acquittal—Information to Magistrate as to taking security from accused*—If a Sessions Judge be of opinion

[illegible]

... Judge could not send the party in custody to the Magistrate. REG v. BYHA VALAD SURJIM . . . 1 Bom, 91

39. ——— Suspicion—*Production of witnesses—Bail*—A person against whom proceedings for bad livelihood have been taken is entitled to have embodied in a charge the precise matter which the Magistrate considers established by evidence against him It is not sufficient to say generally that there is suspicion. He should be

SECURITY FOR GOOD BEHAVIOUR
—*continued*

asked to produce his witnesses or offered assistance

[illegible]

40. ——— *Criminal Procedure Code, 1861, s 296—Examination of witnesses.*—In proceedings taken against a person to obtain security for good behaviour under s 296 of the Criminal Procedure Code, the examination of the witnesses must be taken in the presence of the accused person, who should be permitted to cross examine them. QUEEN v SHUNKUR . 2 N. W., 406

QUEEN v NURSINGH NARAIN
[2 B. L. R., A Cr., 7 note: 10 W. R, Cr., 1

MAGHAN MIRA v CHAMMAN TELI
[2 B. L. R., A. Cr., 7: 10 W. R, 46

41. ——— *Opportunity to accused of cross examining witnesses and calling witnesses*—In an inquiry under Ch XIX of the

[illegible]

42. ——— *Evidence—Previous trial for dacoity—Criminal Procedure Code, 1861, s 296*—Where a person was adjudicated to be a person of notorious bad character, under s. 296,

[illegible]

[13 W R, Cr, 24

43. ——— *Criminal Procedure Code (1882), ss 118 and 123—Power of Sessions Judge to remand—Taking further evidence—Conditions and limitations imposed upon persons required to give security*—Under s. 123 of the Criminal Procedure Code, a Sessions Judge is not competent to remand a case for further inquiry. Such evidence as he may require he must take himself IN THE MATTER OF JHOJHA SINGH v QUEEN EMPRESS . . . I. L. R., 24 Calc., 155

44. ——— *Criminal Procedure Code (1882), ss 110 and 117—Transfer of criminal case—Criminal Procedure Code, s 526*—Where a Magistrate instituting proceedings against a person under s 110 of the Code of Criminal Procedure has "acted" within the meaning of s. 117 of the Code, no order can be made subsequently under s. 526 of the Code transferring the case from his Court IN THE MATTER OF THE PETITION OF GURDAR SINGH . . . I. L. R., 19 All., 291

45. ——— *Sentence of imprisonment—Criminal Procedure Code, 1861, s. 296—Illegal direction.*—A direction annexed to a sentence of imprisonment, under s. 443 of the Penal Code, that the convict be brought up at the expiration of

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the sentence, in order that he may give security for good behaviour for the period of one year, reversed, as not being authorized by s. 296 of the Criminal Procedure Code. REG. *v.* KRISHNAJI BAPUJI GAIKAVAD . . . . . 3 Bom., Cr., 39

46. ——————— *Criminal Procedure Code (1882), ss. 118, 121, 514, sch. V, form No. XLVI—Security for good behaviour—Conviction of principal—Forfeiture of bond—Mode of proving conviction.*—Where a person has given a security-bond under s. 118 of the Code of Criminal Procedure for the good behaviour of another, and the principal during the term for which the bond is in force is convicted of an offence punishable with imprisonment, the production of the conviction, and, if necessary, of proof of identity of the principle is sufficient evidence upon which the Magistrate is authorized to issue notice to the surety under s. 514 of the Code to show cause why the penalty of the bond should not be paid. In such a case it is for the surety to show what cause he can. It is not incumbent on the Magistrate to re-summon the witnesses on whose evidence the principal was convicted and practically to re-try the case against the principal. QUEEN-EMPRESS *v.* MAN MOHAN LAL

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SENTENCE.

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5 Mad., Ap., 18, 20
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2 C. W. N., 49

1. GENERAL CASES

1. ——— **Obligation to pass sentence on conviction**—*Duty of Magistrate.*—Where a Magistrate convicts a person of an offence, he is bound to pass some sentence, if only a nominal one. ANONYMOUS . . 4 Mad., Ap., 66

2. ——— The law gives no discretion to a Court which convicts of an offence to award or not the punishment provided for that offence in the Penal Code. DEWAN SINGH *v.* QUEEN-EMPRESS . I. L. R., 22 Calc., 805

3. ——— **Principals and abettors**—*Abetment of same offence committed as principal.*—Persons punished as principals cannot also be punished for abetment of the same offence. QUEEN *v.* JEETOO CHOWDRY . . 4 W. R., Cr., 23

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4. ——— [illegible]
1866, s. 94 [illegible]
s. 91 Act XX [illegible]
more severely [illegible]
GOPAL PROSA[illegible] . . 5 W. R., Cr., 10

5. ——— **Ground for passing lighter sentence**—*Difference between opinions of Judge and jury.*—A difference of opinion between the Judge and the jury is no ground for the Judge passing a lighter sentence than he would otherwise have done (*Per* JACKSON, J.) QUEEN *v.* GHOLAM MUSTUFFA . 3 W. R., Cr., 29

6. ——— **Ground for mitigation of sentence**—*False evidence.*—Discussion as to the extent of punishment to be passed on certain raiyats who in a case of criminal trespass brought by an indigo planter, falsely swore that cotton and not [illegible]
[8 W. R., Cr., 7

7. ——— **Punishment for escape from custody**—*Penal Code, s. 224—Additional punishment.*—The punishment for escape from lawful custody (s. 224) in a case in which that is one of the offences of which the prisoner is convicted must be "in addition" to any punishment awarded for the substantive offence. QUEEN *v.* DHOONDA BHOOYA
[8 W. R., Cr., 85

8. ——— **False evidence**—*Simple misstatement.*—A deliberate misstatement made in a Court of justice, whether it tends to endanger the life and property of others or to defeat and impede the progress of justice, is not an offence which should be lightly passed over, but for a simple misstatement from which no such inferences can be drawn a comparatively light sentence will suffice, particularly where the prisoner pleads guilty, and throws himself on the mercy of the Court. QUEEN *v.* GURJOON AHEER . 7 W. R., Cr., 37

9. ——— **Voluntarily causing hurt**—*Sentence by Subordinate Magistrate—Causing grievous hurt.*—Where a District Magistrate an[illegible]
[illegible] order of the District Magistrate and restored the conviction and sentence of the Subordinate Magistrate. REG *v.* HANMAPA BIN MALAPA
[7 Bom., Cr., 37

10. ——— Taking Illegal [illegible]
—*Order* [illegible]
illegal [illegible]
money [illegible]
MATTER OF MUTTY LALL CHUTTOPADHYA
[16 W. R., Cr., 74

11. ——— **Kidnapping**—*Maximum sentence.*—The maximum sentence prescribed for the offence of kidnapping should only be awarded in a case of the most aggravated nature. QUEEN *v.* BHOODREA . . . 8 W. R., Cr., 3

SENTENCE—*continued.*

1. GENERAL CASES—*continued.*

12. ———— Measure of punishment—*Murder—Severity of sentence, Mitigation of.*—Where a prisoner convicted of murder against the opinion of the assessors was sentenced to transportation for life, the High Court reduced the sentence to ten years' rigorous imprisonment, remarking on the severity of the Penal Code and on the necessity of administering it so as to make it apply to the various gradations and degrees of crime in this country. QUEEN *v.* HOSSEIN ALLY . 7 W. R., Cr., 47

13. ———— *Rape—Circumstances for consideration.*—The measure of punishment in a case of rape should not depend on the social position of the party injured, but on the greater or less atrocity of the crime, the conduct of the criminal, and the defenceless and unprotected state of the injured female. QUEEN *v.* JHANTAH NOSHYO [6 W. R., Cr., 59

14. ———— *Rioting with deadly weapons.*—In a case of rioting with deadly weapons, the one side found guilty of using them and causing grievous hurt are properly punishable more severely than the men of the other side. QUEEN *v.* MOORUT MAHTON . . 8 W. R., Cr., 3

15. ———— *Rioting and unlawful assembly—Affray.*—Where the evidence in a case failed to establish anything like an unlawful assembly, the conviction was reduced from rioting and being members of an unlawful assembly to one for affray, although grievous hurt from which death resulted was caused to one of the persons. The insufficiency of the punishment allowed by the law in cases of affray pointed out. QUEEN *v.* PHOOLLEE MISSER . . . . . 12 W. R., Cr., 72

16. ———— Sentence on alternative finding—*Penal Code, s. 72.*—An alternative finding is perfectly legal. The sentence should be as provided by s. 72, Penal Code. QUEEN *v.* TARINEE MYTEE . . . . . . 7 W. R., Cr., 13

17. ———— Contemporaneous sentences.—Contemporaneous sentences are not justified by the Penal Code. QUEEN *v.* MOHESH CHUNDER SIRCAR . . . . . 3 W. R., Cr., 13

18. ———— *Sentence under Penal Code and under special law.*—A sentence under the Penal Code and also under a special law in respect of one and the same offence is illegal. QUEEN *v.* HUSSUN ALI . . . . . 5 N. W., 49

19. ———— *Simultaneous conviction for offence, and order for security for good behaviour.*—When a conviction of an offence is contemporaneous with an order for taking security for good behaviour, the sentence for the substantive offence is to be first carried out, and the person to be bound then brought up for the purpose of being bound. QUEEN *v.* SHONA DAGEE [24 W. R., Cr., 13

20. ———— Sentence running from period prior to conviction—*Illegal sentence.*—A Sessions Judge has no power to declare that a sentence shall run from a period prior to the conviction. QUEEN *v.* BUL SINGH . . . 4 N. W., 8

21. ———— Commencement of sentence where appeal is brought—*Date of committal to jail.*—Where on the appeal of Government an order of acquittal is set aside and sentence passed, that *sentence will commence to run from the date of* the committal of the accused to jail, and not from the date of their arrest or of the sentence on the appeal. EMPRESS *v.* MAHUDDI . . 6 C. L. R., 349

22. ———— Sentence to commence at future date—*Conviction, and admission to bail to give means of appeal.*—Where a Magistrate, after sentencing two prisoners to separate terms of imprisonment, admitted them to bail, in order that they might have the means of appealing,—*Held* that such admission to bail did not make the previous sentence one to commence at a future time, and consequently illegal. The case of *Kishen Chunder Bhuttacharjee, 3 B. L. R., A. Cr., 50: 12 W. R., Cr., 47,* distinguished. IN THE MATTER OF OKHOY KUMAR [7 C. L. R., 393

23. ———— Sentence imposed in British India postponed till expiry of a sentence imposed in Mysore—*Criminal Procedure Code (1882), s. 11—Power of Magistrate.*—It is competent to a Magistrate in British India to pass a sentence which should take effect after the expiration of a sentence in Mysore. QUEEN-EMPRESS *v.* VENKATARAM JETTI . . I. L. R., 20 Mad., 444

24. ———— Order for punishment on contingent failure to perform work—*Act XIII of 1859, s. 2.*—An order of a Magistrate passed under s. 2 of Act XIII of 1859, "that the prisoner should work for a certain period, and in case he failed to do so should suffer rigorous imprisonment for one month," annulled as to the latter part, the Magistrate having no power to make such an order until the failure had occurred and been proved before him. REG. *v.* JOMA BIN BALU . 4 Bom., Cr., 37

25. ———— Sentence under repealed Act—*Cattle Trespass Acts, III of 1857 and I of 1871.—Conviction under wrong Act.*—Where a prisoner was properly convicted on the evidence of illegally seizing cattle, but was sentenced under the old law (Act III of 1857), when the Act had been repealed by Act I of 1871, the High Court declined to interfere with the sentence, as the latter Act was in force at the time of the conviction and sentence, and no injustice had been done. MOHESH NATH *v.* HURRO MOHUN GHOSAL . . 16 W. R., Cr., 12

26. ———— Sentence of penal servitude.—The punishment of penal servitude is only applicable to Europeans and Americans. QUEEN-EMPRESS *v.* DUMA BAIDYA . I. L. R., 19 Mad., 483

27. ———— Passing sentence before judgment—*Criminal Procedure Code (Act X of 1882), ss. 366, 367.*—A sentence which has been passed or a direction that an accused be set at liberty

SENTENCE—*continued*

1 GENERAL CASES—*concluded*

which has been given at a sessions trial before the judgment required by s 367 of the Code of Criminal Procedure, 1882 has been written is illegal QUEEN EMPRESS *v* HARGOBIND SINGH

[I L R, 14 All, 242

28 —— — **Imposition of non appealable sentences**—The imposition by Magistrates of non appealable sentences in cases in which the facts are such as to render it very desirable that an appealable sentence should be passed disapproved of JATRA SHEKH *v* REAZAT SHEKH

[I. L R., 20 Calc, 483

2 CAPITAL SENTENCE

29 ———— **Sentence on conviction of murder**—*Sentence of death or transportation*—On a conviction for murder, the only punishments that can legally be awarded are death or transportation for life QUEEN *v* BANI DOSS

[14 W R, Cr, 2

QUEEN *v* JAMAL 16 W. R, Cr, 75

30 — — ———— *Discretion of* [illegible]

31 ———————— *Duty of Magistrates*—Judges must not shrink from doing their duty, and they are bound to pass a capital sentence in a case of murder when they believe the evidence QUEEN *v* SHIB NARAIN PALODHEE

[7 W R, Cr, 33

32 — — **Justification for sentence of death**—*Convict undergoing transportation*—The fact that except death no punishment more severe than that which the prisoner is undergoing at the time of the commission of the offence can be inflicted, is not of itself sufficient to justify the Court in condemning the convict to death QUEEN *v* NGA SHOAY DE [19 W. R., Cr, 68

33 ———— **Conviction of person under transportation of murder**—*Penal Code, s 303*—Where a person under sentence of transportation for life on a conviction for murder is found guilty of murder on a subsequent and different charge the only sentence that can be passed on him under s 303 of the Penal Code is death QUEEN *v* DOORJODHUN SHAMONTO *alias* PERJOTOR 19 W. R, Cr, 45

34 ———— **Pregnancy of accused convicted of murder**—*Suspension of sentence*—Capital sentence should be pronounced on a convict on [illegible]

[10 W. R., Cr., 66

SENTENCE—*continued*

2 CAPITAL SENTENCE—*concluded*

35 ———————— *Suspension of sentence*—When a prisoner was pregnant, the sentence of death passed upon her was ordered not to be carried out until after her delivery QUEEN *v* GHUBBHURNEE W R., 1864, Cr. 1

QUEEN *v* TEPOO . 3 W R, Cr, 15

Since expressly provided for by s 306, Criminal Procedure Code, 1872 and s 382 of Act X of 1882

3 CUMULATIVE SENTENCES

36 —— **Sentencing twice for same offence** [illegible] illegal GOVERNMENT *v* LALAWUN SINGH

[1 Agra, Cr, 31

37 ———— **Cases where same acts are the basis of two charges and convictions**—*Sentence on each charge*—Where substantially only one offence has been committed, and the acts which are the basis of a prisoner's conviction on one charge are the same as the acts which are the basis of his conviction on another charge, cumulative sentences on each charge should not be passed QUEEN *v* RADHAKANTH PAUL . 9 W R, Cr, 12

QUEEN *v* CHUNDER KANT LAHOREE

[12 W R, Cr, 2

38 ———— **Conviction on several charges forming substantially one offence**—*Criminal Procedure Code, 1861, s 46*—Where a person, though charged under different sections of the Penal Code was convicted of what was substantially but a single offence—*Held* that it was not lawful for the Magistrate who tried him to pass a sentence of imprisonment as for separate offences under s 46 of the Code of Criminal Procedure exceeding in the aggregate the punishment which it was competent for the Court to inflict on conviction of a single offence REG *v* GANU LADU

[3 Bom, 132 2nd Ed., 126

39 ———————— *Improper sentence*—Where a person, though charged under two heads was found guilty of what was substantially but one offence—*Held* that it was improper for the Sessions Judge to record a conviction under two sections of the Penal Code, and thereupon to award a punishment of two years' imprisonment in excess of what the law prescribed for the offence committed REG *v* ZOBA KABUDEO 4 Bom., Cr, 12

40 —— [illegible] the principal offence ANONYMOUS

[6 Mad., Ap., 47

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

41. ——— Act coupled with intention —*Same act constituting a less grave offence.*—Where he act of an accused person, coupled with his intention or knowledge, constitutes a graver offence, the circumstance that the same act also answers to the definition of another less grave offence does not render him liable to a cumulative punishment. Case where different statutes provide separate punishments for the same act, distinguished. REG. *v.* DOD BA-AYA . . . . . . 11 Bom., 13

42. ——— Conviction of separate offences—*Criminal Procedure Code, 1861, s. 46—Separate sentences to take effect successively.*—Where prisoners are convicted of separate offences, a separate sentence should be passed in each case, with a direction that the imprisonment in the second case should commence on the expiration of that in the first, and so on. ANONYMOUS . 4 Mad., Ap., 27

43. ——— *Separate sentence to take effect successively.*—In a case of several offences under one section of the Penal Code, the proper way is to try the accused (under separate charges) for each of the several distinct offences under the section, which have been clearly proved against them. On conviction on each of these separate charges, a separate sentence on each conviction should be passed, with a direction (under s. 317 of the Criminal Procedure Code, 1872) that each should take effect on the expiry of the next prior sentence. QUEEN *v.* SOBRAI GOWALAH [20 W. R., Cr., 70

44. ——— *Maximum term of punishment—Joinder of charges.*—Where a person who is accused of several offences of the same kind is tried for each of such offences separately by a Magistrate, the aggregate punishment which such Magistrate can inflict on him in respect of such offences is not limited to twice the amount which he is by his ordinary jurisdiction competent to inflict, but such Magistrate can inflict on him for each offence the punishment which he is by his ordinary jurisdiction competent to inflict. IN THE MATTER OF DAULATIA [I. L. R., 3 All., 305

45. ——— Conviction of several instances of same offence—*Aggregate sentence for purpose of appeal—Separate sentence on each offence.*—For purposes of appeal, the whole punishment awarded to one person on one trial for several instances of the same offence is to be regarded as one sentence. *Semble*—That where a person is tried at the same time for several instances of the same offence, it is not necessary that more than a single sentence should be passed. But if a separate sentence be passed on each head,—*Held* that an appeal brings the aggregate of those sentences, as together constituting the punishment awarded in a single trial, within the jurisdiction of the Appellate Court. REG. *v.* GULAM ABAS . . . . . . 12 Bom., 147

46. ——— Simultaneous convictions —*Sentence for purposes of appeal—Criminal Procedure Code, 1872, s. 314.*—The aggregate of the sentences passed under s. 314 of the Code of Criminal Procedure in a case of simultaneous convictions for several offences must be considered a single sentence for the purposes of confirmation or appeal. REG. *v.* RAMA BHIVGOWDA [I. L. R., 1 Bom., 223

47. ——— Separate sentences—*Abetment of abduction and wrongful confinement—Penal Code, ss. 343, 498.*—The prisoners having been sentenced for abetment of abduction of a woman under ss. 109 and 498 of the Penal Code, and for wrongful confinement of her under s. 343,—*Held* that both sentences could not stand, and that, as the essence of the case was abduction, the prisoners, as abettors therein, should be punished for it alone. QUEEN *v.* ISHWAR CHANDRA JOGEE [W. R., 1864, Cr., 21

48. ——— *Abduction of child to get property from its person—Theft after preparation to cause death—Penal Code, ss. 369, 382.*—Separate sentences cannot be awarded in one case for abducting a child in order to take property from its person (s. 369), and theft after preparation to cause death, etc. (s. 382), where the evidence shows that the act is one and the same. The sentence under the latter section was cancelled, there being no evidence of any preparation having been made to cause death, etc., within the meaning of that section. QUEEN *v.* KASHEE NATH CHUNGO [8 W. R., Cr., 84

49. ——— *Penal Code, s. 369—Abduction with intent to take moveable property—Second punishment for theft.*—A prisoner tried, convicted, and punished under s. 369 of the Penal Code of abducting a child with intent dishonestly to take moveable property, cannot also be punished for the theft of a part of the moveable property which he intended dishonestly to take through means of the abduction; and the second punishment for a theft is by the present Code of Criminal Procedure illegal. QUEEN *v.* NOUJAN. NOUJAN *v.* QUEEN 7 Mad., 375

50. ——— *Penal Code, ss. 71, 183, and 353—Resisting taking of property by public servant—Using criminal force to deter public servant from doing his duty.*—*Held* on the facts of this case that a party (*A*) who objected to accompany a constable who had been directed to produce him before the Court, and also seized the constable by the arm, and resisted his carrying away a pony which *A* was charged with having misappropriated, was guilty of separate offences under ss. 353 and 183 of the Penal Code, and the infliction of separate sentences for each offence was not prevented by s. 71 of that Code. QUEEN *v.* JOYAH MOHUN CHUNDER [14 W. R., Cr., 19

51. ——— *Threatening witnesses—Sentence for each offence.*—An accused who threatened three witnesses was convicted and sentenced to four months' imprisonment for the threat to each witness, in all to one year. It was held that, if a person at one time criminally intimidates three

SENTENCE—*continued*

3 CUMULATIVE SENTENCES—*continued*

different persons, and each of those persons brings a separate charge against him, the accused may be convicted for an offence as against each person, and be punished separately for each offence The facts and evidence in this case however, were considered insufficient to support the sentence, which was reversed as extremely harsh and unjust. IN THE MATTER OF GOOLZAR KHAN 9 W. R, Cr, 30

52 ——————— *Culpable homicide and being member of unlawful assembly* —The prisoner was convicted and sentenced separately for culpable homicide not amounting to murder and for being a member of an unlawful assembly The two offences however, being held to be one (the latter being only part of the evidence of the former), the conviction and sentence for the second offence were quashed QUEEN v LUBBEEOOLAH

[7 W. R, Cr, 13

53. ——————— *Dacoity with murder—Penal Code s 396* —If a person concerned in a dacoity unintentionally commits murder, he is liable to punishment under s. 396 of the Penal Code But he cannot be separately convicted of murder under s 302 and of committing dacoity under s 395 QUEEN v RUGHOO

[W. R, 1864, Cr., 30

54 ——————— *Dacoity and receiving stolen property* —A person convicted of and sentenced for dacoity cannot also be convicted of and sentenced for receiving or retaining the stolen property thereby acquired (*dissentiente* LOCH, J) BHYRUB SEAL v QUEEN QUEEN v BHYRUB SEAL

[W. R, 1864, Cr, 27

QUEEN v ABOOL HOSSEIN 1 W. R, Cr, 48

55 ——————— *Rescuing from lawful custody and using criminal force—Penal Code ss 224, 225 ...*

[illegible]

... has also been convicted, cumulative sentences on each charge should not be passed. Where prisoners were convicted under s 224 for escape, s 225 for rescuing from lawful custody, and under s 353 for using criminal force in so doing and sentenced to separate punishments under each section —*Held* that the prisoners had only done one act and were guilty of only one offence, and should have been found guilty under ss 224 and 225 of "escape" and "rescuing" respectively, and sentenced accordingly QUEEN v KALISANKAR SANDYAL. 3 B L R, A. Cr., 14

QUEEN v DINA SHEIKH

[3 B. L. R., A. Cr, 15 note: 10 W R., Cr, 63

So where prisoners were accused of rioting and using criminal force it was held only one offence IN THE MATTER OF NILKUTTON SEIN

[10 W R, Cr., 45

56 ——————— *Making false charge—Giving false evidence—Separate offences* —The offence of making a false charge and the offence of intentionally giving false evidence are not cognate offences or parts of the same offence but may be punished separately QUEEN v ABDOOL AZEEZ

[7 W. R., Cr, 59

57 ——————— *Penal Code, ss 71, 193, 211—Concurrent sentences—Criminal Procedure Code (Act X of 1882), s 35—Enhancement of sentence* —Where the accused, who was a head constable, was found guilty of making a false charge under s 211, and of giving false evidence under s 193 of the Penal Code (Act XLV of 1860), and the Sessions Judge passed sentences of three months' simple imprisonment for each offence, and, taking into consideration the accused's past conduct, directed that the sentences should run concurrently —*Held* that the sentences were inadequate and illegal Accordingly, the sentences were enhanced to three months' rigorous imprisonment for each offence, and as the two offences were distinct the High Court directed, under s. 35 of the Criminal Procedure Code (Act X of 1882) one sentence to commence after the expiration of the other *Queen v Abdool Azeez, 7 W. R, Cr, 59*, followed QUEEN-EMPRESS v PIR MAHOMED ...

[I. L R, 10 Bom, 254

58 ——————— *Conviction of several offences* —Two prisoners having been convicted of forgery and other offences were sentenced each to an aggregate amount of punishment *Held* that it was an irregularity not to pass a separate sentence under each independent head of the charge REG v VINAYAK TRIMBAK

[2 Bom, 414: 2nd Ed., 391

REG v MRAH TRIKAM 5 Bom, Cr, 3

59 ——————— *Distinct offences—Simultaneous sentence* —Three prisoners were charged with five distinct offences of house breaking by night and were sentenced to two years' rigorous imprisonment in each case *Held* that the Magistrate had power only to pass sentence of four years' imprisonment upon each prisoner, but according to the sentence all the punishments inflicted would be going on simultaneously ANONYMOUS

[5 Mad, Ap, 42

60 ——————— *Criminal Procedure Code, s 35—"Distinct offences"—Penal Code, ss 75, 411* —A person convicted under ss 75 and 411 of the Penal Code is not convicted of "distinct offences ..."

[illegible]

appears to be deserving of a greater punishment than the Magistrate trying it can award, the best course for him to adopt is to commit the accused *for trial* to the Court of Session. QUEEN-EMPRESS v KHALAK

[I. L. R., 11 All, 393

61. ——————— *House breaking and theft* —If a man break into a dwelling-house at night and steal property therefrom, the crime is in

SENTENCE—*continued*

3 CUMULATIVE SENTENCES—*continued.*

1860),—the two offences being part of the same transaction, the theft following the house breaking. The prisoner was sentenced to two years' rigorous imprisonment under s. 457, and to six months' rigorous imprisonment and a fine of R100, or, in default of payment, three months' further rigorous imprison-

gistrate who tried the case The Sessions Judge, to whom an appeal had been preferred, was of the same opinion, and reduced the sentence to two years' rigorous imprisonment. *Held* that, as the accused committed two distinct offences which did not "constitute when combined, a different offence" punishable under any section of the Penal Code (Act XLV of 1860), s. 71 of the Code did not apply, and as the aggregate punishment did not exceed twice the amount of punishment which the trying Magistrate was competent to inflict, the sentences were legal under s 35 of the Criminal Procedure Code (Act X of 1882) *Per* JARDINE, *J.*—The rules for assessment of punishment contained in s 454 of the Criminal Procedure Code of 1872, having been omitted in s 235 of the Criminal Procedure Code of 1882, must now be sought for in s 71 of the Penal Code (Act XLV of 1860) and in s. 35 of the Criminal Procedure Code (Act X of 1882 QUEEN-EMPRESS v SAKHARAM BHAU . . I. L. R., 10 Bom., 493

70. —————— *Lurking house-trespass and theft—Penal Code, ss 380 and 454* —Discussion as to whether cumulative punishment under ss. 454 and 380 is legal for lurking house-trespass and theft. QUEEN v MINA NUGOSUBHATIN [3 W. R., Cr., 19

71. —————— *Penal Code (Act XLV of 1860), s. 71—Criminal Procedure Code (Act V of 1898), s 35—Conviction of several offences at one trial* —Where a person commits house-breaking in order to commit theft and theft, he may be charged with, and convicted of, each of these offences. In awarding punishment under the provisions of s. 71 of the Penal Code (Act XLV of 1860) the Court should pass one sentence for either of the offences in question and not a separate one for each offence. If in such a case two sentences are passed, and the aggregate of these does not exceed the punishment provided by law for any one of the offences, or the jurisdiction of the Court that would be an irregularity, and not an illegality, calling for the interference of a Court of appeal or revision. QUEEN-EMPRESS v. MALU. QUEEN EMPRESS v. NAGU . . . I. L. R., 23 Bom., 706

72. —————— *House-trespass and grievous hurt.*—The prisoner entered a house for the purpose of committing an assault, and in carrying out that intention, caused grievous hurt. In convicting and punishing him for the substantive offence (grievous hurt),—*Held* that it was not necessary to pass a separate sentence for the offence of house-trespass. QUEEN v. BASSOO RANNAH [2 W. R., Cr., 20

73. —————— *Kidnapping—Taking property from child—Penal Code, ss 363, 369* —The offence described in s 363 of the Penal

69, the

taking

uded in

[8 W. R., Cr, 35

74. —————— *Kidnapping—Selling for purpose of prostitution* —There is nothing illegal in passing separate sentences for kidnapping and for selling for purposes of prostitution QUEEN v. DOORGA DOSS . 7 W R., 104

75 —————— *Rioting—Unlawful assembly* —There cannot be a conviction both of "rioting" and of "being members of an illegal assembly" The greater charge includes the less, and to punish under both sections of the Penal Code would be cumulative and illegal. MEELAN KHALIFA v. DWARKANATH GOOPTO . 1 W. R., Cr, 7

76. —————— *Joining unlawful assembly and rioting with deadly weapon —Penal Code, ss 144, 148* —There is nothing illegal in sentencing a prisoner for both offences of joining an unlawful assembly armed with a deadly weapon (s 144), and rioting armed with a deadly weapon, though the former is almost merged in the latter offence. SREEKISSEN v. JUGLAL [9 W. R, Cr, 5

77. —————— *Rioting armed with deadly weapon—Causing hurt by shooting* —Where prisoners are charged both with rioting, being armed with deadly weapons, and with causing hurt by shooting, and their conviction of the latter offence rests solely on the fact of their belonging to a party

either one or other of those offences QUEEN v DURZOOLLA 9 W R., Cr., 33

78. —————— *Rioting with deadly weapon—Grievous hurt—Penal Code, ss 148, 149, and 324* —The offence of rioting, armed with deadly weapons, and stabbing a person on whose premises the riot takes place, are distinct offences and punishable as separate offences under ss. 148, 149, and 324 of the Penal Code, s. 149 being read as a proviso to s. 148. QUEEN v CALLACHAND [7 W R., Cr., 60

79 —————— *Conviction of rioting and causing hurt by dangerous weapons—Distinct offences—Separate charges—Penal Code, ss. 71, 148, 149, 324—Act X of 1882 (Criminal Procedure Code), ss. 35, 235—Act X of 1872 (Criminal Procedure Code), ss. 314 454—Act VIII of 1882, s 4.*—The offences of rioting armed with a deadly weapon and voluntarily causing hurt with a dangerous weapon to two persons are distinct offences, and a person charged with such offences can be convicted and sentenced in respect of the rioting and of

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

the hurt caused to each of the persons injured. *A* and *B* were charged with rioting armed with deadly weapons under s. 148 of the Penal Code, and they were also charged under s. 324, coupled with s. 149, with causing hurt by a dangerous weapon to *X*, and *B* was further charged under s. 324 with causing a like hurt to *Y*, *A* being also charged under s. 324, coupled with s. 149, in respect of the hurt caused by *B* to *Y*. *A* and *B* were convicted on all charges, and separate sentences, to take effect in succession, were awarded in respect of each offence charged. The offences under s. 324 were committed during the riot. *Held* that the several acts with regard to which the prisoners were charged did not fall within the provisions of s. 71 of the Penal Code, inasmuch as it was not found that the causing of the hurt was the force or violence which alone constituted the rioting, and that consequently under s. 235 of the Criminal Procedure Code the several sentences passed were strictly legal. LOKE NATH SIRCAR *v.* QUEEN-EMPRESS . . I. L. R., 11 Calc., 349

80. ——— *Separate convictions for more than one offence where acts combined form one offence—Penal Code (Act XLV of 1860), ss. 143, 147, 324, 353—Act VIII of 1882, s. 4—Criminal Procedure Code (Act X of 1882), s. 235.*—Four persons were charged with being members of an unlawful assembly consisting of themselves and others, the common object of which assembly was resisting the execution of a legal process, namely, the arrest of a judgment-debtor by a Civil Court peon, who went with a warrant for his arrest accompanied by other persons, *A* and *B*, for the purpose of identifying him, and with using force or violence in prosecution of the common object, such force or violence consisting of an assault on the Civil Court peon, and another by means of a dangerous weapon on *A*. The Deputy Magistrate convicted all the accused of offences under ss. 147 and 353 of the Penal Code, and sentenced them to six months' rigorous imprisonment under the former section and two months' rigorous imprisonment under the latter. He further convicted one of the accused of an offence under s. 324 in respect of the assault on *A*, and sentenced him to one month's rigorous imprisonment in respect of that offence, and directed that the sentences were to take effect one on the expiry of the other. *Held* that the offence of rioting was completed by the assault on *A*, and that the assault on the peon was a further offence under the first sub-section of s. 235 of the Code of Criminal Procedure. *Held* further that, even if *A* had not been assaulted, the conviction and sentences passed for rioting and the assault on the peon were legal, inasmuch as the acts of the accused, taken separately, constituted offences under ss. 143 and 353 of the Penal Code, and, combined, an offence under s. 147; and under s. 235, sub-s. (3), of the Code of Criminal Procedure, the accused might be charged with and tried at one trial for the offence under s. 147, and those under ss. 143 and 353, and therefore also separately convicted and sentenced for each such offence, provided the punishment did not exceed the limit imposed by s. 71 of the Penal Code

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

as amended by s. 4 of Act VIII of 1882, which limit had not been exceeded in the present case. IN THE MATTER OF CHANDRA KANT BHATTACHARJEE. CHANDRA KANT BHATTACHARJEE *v.* QUEEN-EMPRESS . . . . I. L. R., 12 Calc., 495

81. ——— *Penal Code (Act XLV of 1860), ss. 147, 353, and* $\frac{353}{149}$, *Cumulative sentences under—Legality of sentence—Criminal Procedure Code (Act X of 1882), ss. 35, 235.*—*Held* that a double sentence under ss. 147 and 353, Penal Code, is illegal where the force which was used, and which formed one of the component elements of the offence of rioting, was the criminal force used to the public servants. *Held* also that a sentence under s. 353, Penal Code, for actually committing an offence under that section, and a further sentence under s. 353 read with s. 149 for committing the same offence constructively, is illegal. The High Court set aside the cumulative sentences under ss. 353 and $\frac{353}{149}$ respectively, but upheld the sentence under s. 147. RAMDIHAL *v.* QUEEN-EMPRESS . . 3 C. W. N., 174

82. ——— *Penal Code Amendment Act (VIII of 1882), s. 4—Offence made up of several offences—Rioting—Grievous hurt—Criminal Procedure Code, 1882, s. 235—Penal Code, ss. 146, 147, 149, 325.*—A member of an unlawful assembly, some members of which have caused grievous hurt, cannot lawfully be punished for the offence of rioting as well as for the offence of causing grievous hurt. EMPRESS *v.* RAM PARTAB [I. L. R., 6 All., 121

83. ——— *Separate charges—Criminal Procedure Code (Act X of 1872), s. 454, illus. (f)—Penal Code (Act XLV of 1860), ss. 147, 148, and 324.*—Under s. 454 of the Criminal Procedure Code, the collective punishment awarded under ss. 147, 148, and 324 of the Penal Code must not exceed that which may be awarded for the graver offence. *Quære*—Whether separate convictions under ss. 147 and 324 of the Penal Code are legal. IN THE MATTER OF THE PETITION OF JUBDUR KAZI. EMPRESS *v.* JUBDUR KAZI I. L. R., 6 Calc., 718

S. C. IN RE JUBDUR KAZI . 8 C. L. R., 390

84. ——— *Rioting—Grievous hurt—Criminal Procedure Code, 1882, s. 235—Penal Code, ss. 146, 147, 149, 325.*—Three persons who were convicted (i) of the riot under s. 147 of the Penal Code, (ii) of causing grievous hurt in the course of such riot, were respectively sentenced to six months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 147, and three months' rigorous imprisonment under s. 325. *Held* by PETHERAM, *C.J.*, and STRAIGHT and TYRRELL, *JJ.*, that inasmuch as the evidence upon the record showed that the three prisoners had committed individual acts of violence with their own hands, which constituted distinct offences of causing grievous hurt or hurt separate from and independent of the offence of riot, which was already completed, and the fact of the riot was not an essential portion of the evidence necessary to

SENTENCE—*continued*

3. CUMULATIVE SENTENCES—*continued.*

establish their legal responsibility under s 325 of the Penal Code, the separate sentences passed under ss 147 and 325 were not illegal *Queen Empress v Ram Partab, I L R, 6 All 121,* distinguished *Per* BRODHURST, *J*, that the evidence showed that only one of the three prisoners had caused grievous hurt with his own hands, and that the others could only be properly convicted of that offence under the provisions of s 149 of the Penal Code, but that the separate sentences passed under ss 147 and 325 were not illegal *Queen Empress v Dungar Singh, I L R, 7 All, 29,* followed Also *per* BRODHURST, *J*—Illus (*g*) of s 235 of the Criminal Procedure Code does not apply merely to the case of persons who in addition to the offence of rioting, have with *their* own hands committed *the further offences* of voluntarily causing grievous hurt, and of assaulting a public servant when engaged in suppressing a riot; and the convictions referred to in the illustration relate especially to convictions obtained under the provisions of s 149 of the Penal Code QUEEN EMPRESS v RAM SARUP

[I. L. R., 7 All., 757

85. ———— *Criminal Procedure Code, 1882, s 35 and s 235—Convictions of rioting and causing grievous hurt—Offences distinct—Penal Code (Act VIII of 1882), s 4—Penal Code, ss. 147, 325.*—The offences of rioting, of voluntarily causing hurt, and of voluntarily causing grievous hurt, each of the two latter offences being committed against a different person, are all distinct offences within the meaning of s 35 of the Criminal Procedure Code Under the first paragraph of s 235 of the Criminal Procedure Code, a person accused of rioting and of voluntarily causing grievous hurt may be charged with and tried for each offence at one trial, and under s 35 a separate sentence may be passed in respect of each *Queen Empress v Ram Partab, I L. R, 6 All, 121,* dissented from QUEEN-EMPRESS v DUNGAR SINGH . I. L. R., 7 All , 29

86. ———— *Penal Code, s 71—Criminal Procedure Code, ss 39, 235—Rioting, grievous hurt, and hurt—Punishment for more than one of several offences*—On the 8th August 1884 a Magistrate of the second class began an inquiry in a case in which several persons were accused of rioting and of voluntarily causing grievous hurt. On the 6th September the powers of a Magistrate of the first class were conferred on the Magistrate by an order of Government, which was communicated to him on the 8th September On the 9th September the case for the prosecution having closed, the Magistrate framed charges against each of the accused under ss 323 and 325 of the Penal Code, recorded the statements of the accused and the evidence for the defence, and on the 10th September convicted the accused of all the charges, passing upon each of them, in respect of each charge, sentences which he could pass as a Magistrate of the first class, but could not have passed as a Magistrate of the second class. On appeal, the Sessions Judge, on the ground that the prisoners had committed the offence described in s. 148 of the Penal Code, held that the sentences

SENTENCE—*continued*

3 CUMULATIVE SENTENCES—*continued.*

have inflicted under s. 148 *Held* by the Full Bench (PETHERAM, C J, and BRODHURST, J, dissenting) that the sentences passed by the Magistrate were legal *Per* OLDFIELD and DUTHOIT, *JJ*, that the provisions of s 71 of the Penal Code had no application to the case, inasmuch as the offences of causing grievous hurt and hurt formed no part of the offence of rioting *Per* BRODHURST, *J*, that the sentences passed by the Magistrate were, as a whole, illegal, that if he had convicted the accused *under s 148 of the Penal Code, his order would,*

offence of causing grievous hurt. *Empress v Dungar Singh, I L R, 7 All, 29,* referred to QUEEN-EMPRESS v PERSHAD

[I. L. R., 7 All , 414

87. ———— *Penal Code, s 71 and ss 147, 149, and 325—Rioting—Grievous hurt committed in the course of riot and in prosecution of the common object—Distinct offences—Separate sentences—Act VIII of 1882, s 4—Criminal Procedure Code s 235*—S 149 of the Penal Code creates no offence, but was intended to make it clear that an accused person whose case falls within its terms cannot put forward the defence that he did not with his own hand commit the offence committed in prosecution of the common object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. In prosecution of the common object of an unlawful assembly, *M*, with his own hand, caused grievous hurt. *M* and other members of the assembly, as to whom it did not appear whether or not any of them personally used force or violence, were convicted of rioting under s. 147 and grievous hurt under s. 325 of the Penal Code, and were each sentenced to separate terms of imprisonment for each offence. The highest aggregate punishment, which was *M's*, was six years'

exceed the maximum punishment of seven years' rigorous imprisonment which could have been awarded for the offence punishable under s. 325 *Held* also that the riot could not in any of the cases be considered a part of the offence under s. 325, that s. 71 did not apply, and that the sentences were legal. *Queen-Empress v. Ram Partab, I L R, 6 All., 121,* dissented from. *Queen Empress v Dungar Singh, I. L. R, 7 All., 29; Queen-Empress v Ram Sarup, I. L. R., 7 All, 757, Queen v. Rubbee-oollah, 7 W. R, Cr., 13, Loke Nath Sarkar v Queen Empress I. L. R., 11 Calc, 349, Queen-Empress v. Pershad'*

SENTENCE—*continued.*

3. CUMULATIVE SENTENCES—*continued.*

I. L. R., 7 All., 414; Chandra Kant Bhattacharjee v. *Queen-Empress, I. L. R., 12 Calc., 498*; and *Reg.* v. *Tukaya bin Tamana, I. L. R., 1 Bom., 214,* referred to. QUEEN-EMPRESS *v.* BISHESHAR

[I. L. R., 9 All., 645

88. ——— *Separate sentences for rioting and grievous hurt—Penal Code, ss. 71 (para. 1), 144, 147, 148, 334—Act VIII of 1882, s 4—Criminal Procedure Code (Act X of 1882), s. 35.—Per curiam* (TOTTENHAM, J, dissenting).—Separate sentences passed upon persons for the offences of rioting and grievous hurt are not legal where it is found that such persons individually did not commit any act which amounted to voluntarily causing hurt, but were guilty of that offence under s. 149 of the Penal Code. *Empress* v. *Ram Partab, I. L. R., 6 All, 121,* approved. *Loke Nath Sirkar* v. *Queen-Empress, I. L. R., 11 Calc., 349,* overruled. NILMONEY PODDAR *v.* QUEEN-EMPRESS

[I. L. R., 16 Calc., 442

89. ——— Separate sentences should not be passed for rioting and assaulting a public servant in execution of his duty when practically the offence of assaulting the public servant was the common object of the unlawful assembly, the members of which committed such rioting. *Nilmoney Poddar* v. *Queen-Empress, I. L. R., 16 Calc., 422,* followed. HRIDOY MONDAL *v.* JAGANANDA DAS

[4 C. W. N., 245

90. ——— *Rioting — Distinct offences—Conviction for rioting and causing hurt and grievous hurt—Separate conviction for more than one offence when acts combined form one offence—Abetment of grievous hurt during riot—Penal Code (Act XLV of 1860), ss. 147, 323, 325.*—Six accused persons were charged with, and convicted of, rioting, the common object of which was causing hurt to two particular men. Four of the accused were also charged with, and convicted of, respectively, causing hurt during the riot to the two men and a woman, and were sentenced to separate terms of imprisonment under ss. 147 and 323 of the Penal Code. *Held* that the sentences were legal. During the course of a riot, in which *X* was attacked and beaten by several of the rioters, one of them, *K*, inflicted grievous hurt on *X* by breaking his rib with a blow struck with a lathi; *X* and three others of the rioters were charged with offences under ss. 147 and 325 of the Penal Code, and *K* was convicted under those sections. The other three were convicted under s. 147 and also under s. 325 read with s. 109. Separate sentences were passed on *K*, and also on the other three for each of the offences. *Held* that the sentences on *K* were legal, but that, as there was nothing to show that the other three had abetted the particular blow which caused the grievous hurt, although they had each of them assaulted *X*, the conviction of them under s. 325 read with s. 109 could not be supported. IN THE MATTER OF THE PETITION OF MOHUR MIR *v.* QUEEN-EMPRESS. IN THE MATTER OF THE PETITION OF KALI ROY *v.* QUEEN-EMPRESS

[I. L. R., 16 Calc., 725

91. ——— *Rioting and theft—Common object of unlawful assembly being theft—Separate sentences, Legality of—Penal Code (Act XLV of 1860), ss. 71, 147, 149, 379.*—When persons are charged with rioting and theft and the common object of the unlawful assembly by which the rioting was caused is theft and they are convicted both for rioting and theft, without any finding by the Court that any one of the accused persons individually committed theft,—*Held* that, under s. 71 of the Indian Penal Code, it is improper to pass separate sentences upon accused persons both for rioting and theft, when the former offence is but an element of the latter, and that they are under that section liable to punishment only in respect of one or other of those offences. *Nilmony Poddar* v. *Queen-Empress, I. L. R., 16 Calc., 442,* followed. MITHOO SINGH *v.* GOPAL LAL . . . **3 C. W. N., 761**

92. ——— *Rioting armed with deadly weapons—Separate and distinct offences—Causing hurt and grievous hurt—Resistance and obstruction to police—Penal Code, ss. 71, 148, 152, 332, 333.*—Eight persons, who were charged with a number of others, were tried on various charges consisting of rioting armed with deadly weapons (s. 148, Penal Code), assaulting or obstructing a public servant when suppressing a riot (s. 152), and voluntarily causing hurt and grievous hurt to deter a public servant from his duty (ss. 332 and 333). The common object set out in the charge was "to resist the execution of a decree obtained by *A* against *B* in the Court of the Second Subordinate Judge of Alipore, dated 30th April 1891, and also by means of criminal force or show of criminal force to overawe the members of the police force in the execution of their lawful powers as police-officers," and it was held that resistance to the police was one of the component parts of the offence of rioting charged. At the trial in the Court of Session all eight accused were convicted of the offence charged under s. 148, and each was sentenced to the maximum punishment allowed under that section, *viz.*, three years' rigorous imprisonment. Seven out of the eight were convicted of offences under under s. 152, and sentenced each to an additional term of two years' rigorous imprisonment for those offences. Two out of the seven accused were further convicted of offences under s. 332 of the Penal Code, the hurt therein charged being caused to police officers engaged in suppressing the riot, and each sentenced to a further additional term of two years' rigorous imprisonment for that offence. The eighth accused, who was not convicted of an offence under s. 152, was convicted of an offence under s. 333, the grievous hurt being similarly caused to a police officer, and for that offence was sentenced to five years' rigorous imprisonment in addition to the sentence of three years passed on him under s. 148. It was contended on appeal—(1) that the sentences passed under s. 152 in addition to those under s. 148 were illegal; (2) that separate sentences under s. 152 and ss. 332 and 333 were illegal; (3) that the cumulative sentences under s. 148 and ss. 332 and 333 were illegal in so far as they exceeded the maximum

SENTENCE—*continued*

3. CUMULATIVE SENTENCES—*continued.*

sentence provided for either of the offences *Held*, as regards (1), that as resistance to the police was one of the component parts of the offence of rioting of which the accused were convicted and sentenced to the maximum punishment provided by s 148, and having regard to the provisions of s. 71, the additional sentences under s 152 were illegal *Held*, as regards (2), that separate sentences under s. 152 and ss 232 and 333 were illegal, as the hurt inflicted on the police officers was the violence towards them which constituted the essence of the offence under s 152 *Held*, as

[I. L. R., 19 Calc., 105

93. ———— *Penal Code, ss 71, 148, 141, 326—Separate sentences for rioting and*

of rioting and is also found to have himself caused the hurt, h

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Sarup, I L R., 7 All., 757, approved QUEEN-EMPRESS v BANA PUNJA . I. L. R., 17 Bom., 260

94. ———— *Personating public servant—Extortion—Conviction for each offence proved necessary—Separate sentences—Sentence necessary upon each conviction—Penal Code (Act XLV of 1860), ss 71, 170, 383—Criminal Procedure Code, ss 35, 235*—Where more than one offence is proved in respect of which the accused has been charged and tried, a conviction for each such offence must follow, whether s. 71 of the Penal Code applies to the case or not; and, subject to the provisions of s. 71, a separate sentence must be passed in respect of each such conviction Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. In a trial for offences under ss 170 and 383 of the Penal Code, committed in the same transaction, it appeared that but for personating a public servant the accused would not have been in a position to commit the act of extortion complained of *Held* that the first and second paragraphs of s. 71 of the Penal Code did not apply to the case; that the third paragraph also did not apply because the words "constitute an offence" refer to the definitions of offences contained in the Code, irrespective of the evidence whereby the acts complained of are proved, and personating a public servant as defined in s. 170 was not a constituent element of extortion as defined in s. 383; that in the present case the former offence was completed before the latter had begun; and that separate sentences for

SENTENCE—*continued*

3. CUMULATIVE SENTENCES—*concluded.*

each offence were therefore not illegal. QUEEN-EMPRESS v WAZIR JAN I. L. R., 10 All., 58

95. ———— ———— *Receiving stolen property and assisting in concealment of it—Penal Code, ss. 411, 414—Criminal Procedure Code, 1861, s 46*—The offences specified in ss. 411 and 414 of the Penal Code cannot be considered as two distinct offences, so as to allow of the procedure of s 46 of the Criminal Procedure Code being adopted ANONYMOUS [4 Mad., Ap., 14

96.

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could not be sentenced separately as for two offences of theft QUEEN v MONEERAH 11 W. R., Cr., 38

97. ———— *Theft—Receiving stolen property*—A person convicted of robbery or theft cannot be also convicted of dishonestly receiving in respect of the same property. QUEEN v MUDDUN ALLY . . . 1 W. R., Cr., 27

QUEEN v SREEMUNT ADUP . 3 W. R., Cr., 63

QUEEN v. SEEBCHURN HAREE 11 W. R., Cr., 12

QUEEN v SHEEB CHUNDER HAREE [11 W. R., Cr., 13 note

98. ———— *Theft and mischief—Double sentence*—A double sentence for theft and mischief is illegal and improper BICHUK AHEER v. AUHUCK BHOONEEA 6 W. R., Cr., 5

99. ———— *Mischief and theft—House-breaking and theft*—Separate convictions and sentences under ss 429 and 379 and under ss 457 and 380 of the Penal Code were set aside, and the convictions under s. 429 in the former case, and under s. 457 in the latter, allowed to stand. QUEEN v SAHRAB . 8 W. R., Cr., 31

100 ———— *Criminal tres-*

cl. iii of s 454 of Act X of 1872, receive a punishment more severe than might have been awarded for either of such offences. The provisions of that law do not in such a case prohibit the Court from passing sentence in respect of each offence established. EMPRESS v. BUDH SINGH I. L. R., 2 All., 101

101. ———— *Separate offences—Penal Code, ss 143, 253*—A cumulative sentence under s. 143 of the Penal Code (being a member of an unlawful assembly), and under s 253 (using criminal force against a public servant), was upheld by the High Court in this case. IN THE MATTER OF GOBIND CHUNDER ROY . 16 W. R., Cr., 70

4. FINE.

102. ———— Specific fine on each prisoner—*Trial of several prisoners.*—A sentence

SENTENCE—*continued.*

4. FINE—*concluded.*

of fine must impose a specific fine on each prisoner. ANONYMOUS . . . 5 Mad., Ap., 5

103. Wrongful confinement—*Penal Code, s. 344.*—Fine alone is not a legal sentence for a prisoner convicted under s. 344 of the Penal Code. REG. v. BAHIRAJI BIN KRISHNAJI [1 Bom., 39

104.———— Separate offences—*Alternative sentence allowed only in one.*—Where a conviction has been had under two sections of the Penal Code, in one of which only an alternative sentence of imprisonment or fine is allowed, a sentence of fine cannot be passed. QUEEN v. BHOOBUN MOHUN [11 W. R., Cr., 39

105. ———— Offence under Act XIX of 1838, s. 13—*Omission of owner of harbour craft to produce certificate of registry.*—The Legislature, when it enacted in s. 13 of Act XIX of 1838 that persons who committed certain acts should be "subject to a fine of ten times the fee" or "subject to a fine of ten rupees," intended that the penalties so specified should be inflicted in full. The owner of a harbour craft having been fined R2 for omission to produce a certificate of registry when demanded by the customs authorities, the High Court annulled the sentence as being illegal, and inflicted the full penalty of ten rupees. EMPRESS v. MHASNYA RAMA [I. L. R., 7 Bom., 280

106.———— Theft in dwelling-house—*Penal Code, s. 380—Imprisonment.*—On conviction for theft in a dwelling under s. 380 of the Penal Code, fine cannot be substituted in lieu of imprisonment, though it may be added to imprisonment. DULLOO v. ZAINAH BEBEE . 16 W. R., Cr., 17

107.———— Offence under Act XVIII of 1854 (Railway Act), s. 34—*Imprisonment.*—S. 34 of Act XVIII of 1854 prescribes the mode in which fines levied under that Act are to be recovered. It is only on the return of the warrant of distress unsatisfied, or on the Magistrate being otherwise satisfied that no sufficient distress exists, that imprisonment can be imposed. ANONYMOUS [6 Mad., Ap., 37

108.———— Transportation with fine—*Levy of portion of fine.*—When a fine is imposed in addition to transportation, and the whole or part of the fine is levied, it is the duty of the Sessions Judges to inform the authorities at Port Blair of the fact. ANONYMOUS . . 5 Mad., Ap., 44

109.————Imposition of additional fine under Court Fees Act (VII of 1870), s. 31.—An Assistant Magistrate, having convicted the accused persons, sentenced them to pay a fine, out of which R2 was to be paid to the complainant for his expenses; the Deputy Magistrate, on appeal, having confirmed the conviction, passed an order under Court Fees Act, s. 31 directing the accused to pay a further sum to the complainant. *Held* that the order was illegal, and should be set aside. QUEEN-EMPRESS v. TANGAVELU CHETTI . I. L. R., 22 Mad., 153

SENTENCE—*continued.*

5. IMPRISONMENT.

(a) IMPRISONMENT GENERALLY.

110. ———— False statement on oath to public servant—*Penal Code, s. 181—Illegal sentence.*—A sentence under s. 181 of the Penal Code which awards no term of imprisonment is illegal. ANONYMOUS . . . 4 Mad., Ap., 18

111. ———— Accumulation of sentences of imprisonment—*Criminal Procedure Code, 1861, s. 46—Sentences not simultaneous.*—Sentences of imprisonment might be accumulated beyond the period of fourteen years, notwithstanding s. 46 of the Criminal Procedure Code, which limit had reference only to sentences passed simultaneously, or passed upon charges tried simultaneously. QUEEN v. PUBAN . . . . 7 W. R., Cr., 1

112. ———— Concurrent sentences—*Criminal Procedure Code, 1882, s. 35.*—Under s. 35 of the Criminal Procedure Code, sentences of imprisonment cannot be passed so as to run concurrently. QUEEN-EMPRESS v. WAZIR JAN [I. L. R., 10 All., 58

113. ———— *Criminal Procedure Code (Act X of 1882), s. 35—Sentence—Concurrent sentences of imprisonment—Penal Code (Act XLV of 1860), s. 409.*—Sentences of imprisonment passed for distinct offences to run concurrently are not warranted by law. *Queen-Empress* v. *Wazir Jan, I. L. R., 10 All., 58,* referred to. DAITARI DAS v. QUEEN-EMPRESS . I. L. R., 25 Calc., 557

114. ———— *Criminal Procedure Code (Act X of 1882), ss. 35 and 397—Concurrent sentences not authorized by the Code.*—There is no provision in the Code of Criminal Procedure by which a Court is empowered, on convicting an accused person of two or more offences at the same time, to direct that the sentences imposed in respect of such offences shall run concurrently. QUEEN-EMPRESS v. ISHRI . . I. L. R., 20 All., 1

115. ———— Criminal Procedure Code, 1872, s. 309—*Penal Code, s. 65.*—S. 309 of the Criminal Procedure Code did not extend the period of imprisonment which might be awarded by a Magistrate under s. 65 of the Penal Code; it only regulated the proceedings of Magistrates whose powers were limited. EMPRESS v. DARBA [I. L. R., 1 All., 461

116. ————Commencement of sentence of imprisonment—*Postponement of sentence—Criminal Procedure Code (Act XXV of 1861), ss. 46, 47, 48, and 421.*—A sentence of imprisonment ought to commence from the time that the sentence is passed, unless there is some lawful reason for ordering it to commence at some future period. Except as in the cases provided for by ss. 46, 47, and 48 of the Criminal Procedure Code, a Magistrate cannot authorize a sentence passed by him to take place from some future date, nor, except as provided for by s. 421 of the Code of Criminal Procedure, can a sentence, which is to take place immediately, be suspended. IN THE MATTER OF KRISHNANAND BHUTTACHARJEE . 3 B. L. R., A. Cr., 50

SENTENCE—*continued*

5. IMPRISONMENT—*continued*

S. C IN THE MATTER OF KISHEN SOONDER BHUTTACHARJEE 12 W. R., Cr, 47

117 ——— Imprisonment in lieu of whipping—*Criminal Procedure Code, s 395—Infliction of fine in lieu of whipping*—A Court has no power under s 395 of the Criminal Procedure Code to revise its sentence of whipping by inflicting a fine In cases where the sentence of whipping cannot be carried out all that the Court can do is either to remit the whipping altogether, or to sentence the offender, in lieu of such whipping or of so much of the sentence of whipping as was not carried out, to imprisonment, etc The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment and not imprisonment for default in payment of a fine QUEEN-EMPRESS v SHEODIN I. L. R., 11 All, 308

118 ——— Confirmation of sentence —*Criminal Procedure Code, 1872 s 36*—S 36 of the Criminal Procedure Code, as regards the necessity for confirmation of the sentence by the Sessions Judge, referred to cases in which the sentence of imprisonment was a sentence of upwards of three years without including any additional sentence as to fine or whipping IN THE MATTER OF THE PETITION OF SUMSHER KHAN EMPRESS v SUMSHER KHAN I L R., 6 Calc, 624

119 — Attempt to commit offence

120. ——— Offence under Act XIII of 1859, s. 2—*Form of sentence*—A sentence of imprisonment should not be announced beforehand in the order directing performance of the contract in a case under Act XIII of 1859, s 2 but should follow on a complaint of non compliance ANONYMOUS 6 Mad., Ap, 24

in a stage of a judicial proceeding, under s. 228 Penal Code, a sentence of imprisonment cannot be passed under s. 163 of the Code of Criminal Procedure IN THE MATTER OF BUHRAM KHAN [10 W. R., Cr, 47

122 ——— Dacoity—*Penal Code s 395*—A sentence of fourteen years' imprisonment cannot be passed for dacoity under s 395 of the Penal Code. QUEEN v HAROO RUJWAR [13 W. R., Cr., 27

123 ——— Disobedience to order of public servant—*Rigorous imprisonment—Penal Code, s 188*—A sentence of rigorous imprisonment passed by a Magistrate, under s. 188 of the Penal Code, for disobedience to an order duly promulgated by a public servant, altered to one of simple imprisonment, as the Magistrate's finding did not show that the case came within the latter part of the section, in which case alone the infliction of rigorous imprisonment was authorized. REG v IATAN RAV BIN MAHADEVRAV CHAVAN 3 Bom., Cr, 32

124. ——— Giving false evidence—*Penal Code s 193—Duty of Court*—Under s. 193 of the Penal Code it is obligatory upon the Court, in every case of conviction under that section, to pass some sentence of imprisonment EMPRESS v KHODAI SINGH 3 C L R., 527

125 ——— False evidence to procure

a guilty person QUEEN v ADOO [W. R., 1864, Cr, 16

126 — Deliberately fabricating false evidence—*Measure of sentence*—A sentence of three years' imprisonment is not too severe a punishment for a deliberate attempt to pervert justice by fabricating in one office false statements to be designedly and corruptly used in another QUEEN v KALACHAND BOIDYO 8 W. R., Cr, 18

127 ——— Grievous hurt—*Penal Code s 325—Fine*—The offence of voluntarily causing grievous hurt is punishable, not by fine alone but by imprisonment the offender being also liable to fine QUEEN v SHARODA PESHAGUR 2 W R., Cr, 32

QUEEN v MENAZOODIN. 2 W. R, Cr, 33

imprisonment, in addition to the six months' rigorous imprisonment passed by the Deputy Magistrate *Held* that the commutation of the punishment was illegal QUEEN v BANDA ALI [6 B L. R., Ap, 95. 15 W R., Cr, 7

129 ——— Offence under Madras Police Act, 1859, s. 48—*Rigorous imprisonment—Measure of sentence*—A sentence of rigorous imprisonment under conviction for an offence under s 48, Act XXIV of 1859, was illegal ANONYMOUS [5 Mad., Ap, 35

130 ——— Offence under Registration Act (VIII of 1871), s 80—*General Clauses Consolidation Act (I of 1868) s 2, cl 18—Rigorous and simple imprisonment*—*Held* that under Act I of 1868, s. 2, cl. 18, the Sessions Judge should have specified in his warrant whether the imprisonment awarded to a person convicted under s. 80, Act VIII of 1871, should be simple or rigorous, but that, as he

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

had omitted this at the proper time, simple imprisonment should now be set forth in the sentence and warrant. LEGAL REMEMBRANCER *v.* RADHOO CHURN ASH. GOVERNMENT *v.* RADHOO CHURN ASH [18 W. R., Cr., 3

131. ———— Indefinite period of imprisonment in default of security, Order for. —An order directing an accused "to be imprisoned until he gives security" is bad; a definite period for such imprisonment, not exceeding one year, should be stated in the order. MAILAMDI FAKIR *v.* TARIPULLA PRAMANIK . . I. L. R., 8 Calc., 644

132. ———— Imprisonment in default of giving security for good behaviour—*Criminal Procedure Code, 1861, s. 296.*—Where a prisoner, in addition to a sentence passed upon him, is required to furnish security for his good behaviour, under s. 296 of the Criminal Procedure Code, for a period of one year, his imprisonment in default of providing such security must commence to run from the date of the order to furnish security, and cannot be directed to run from the expiry of the sentence passed upon the prisoner. QUEEN *v.* TORAL GUJAR 3 N. W., 126

133. ———— Receiving stolen property—*Criminal Procedure Code, 1872, s. 505—Addition to sentence of order for security for good behaviour.*—*P* was convicted by a Magistrate of the first class of dishonestly receiving stolen property. He confessed on his trial that he had twice previously been convicted of theft. He was sentenced to be whipped, to be rigorously imprisoned, and on the expiration of the term of imprisonment to furnish security for good behaviour. *Held* that the order requiring security should not have formed part of the sentence for the offence of which *P* was convicted. A proceeding should have been drawn out representing that the Magistrate was satisfied from the evidence as to general character adduced before him in the case, that *P* was by repute an offender within the terms of s. 505 of Act X of 1872, and therefore security would be required from him, and an order should have been recorded to the effect that, on the expiry of imprisonment, *P* should be brought up for the purpose of being bound. EMPRESS *v.* PARTAB [I. L. R., 1 All., 666

134. ———— Addition to sentence of further imprisonment in default of engagement to keep the peace—*Criminal Procedure Code, 1869, s. 280.*—The prisoner was convicted of an offence punishable under s. 307 of the Penal Code. In addition to the sentence passed upon him under that section, the Sessions Judge directed, under s. 280 of the Code of Criminal Procedure, that, at the expiration of the term of imprisonment imposed, the prisoner do execute a formal engagement in a sum of R100 for keeping the peace towards the prosecutor for a period of one year, and in default to undergo simple imprisonment for that period. The High Court set aside so much of the sentence as directed the imprisonment of the prisoner in default of entering into the required engagement. QUEEN *v.* SELLAM . . . . . . 6 Mad., 25

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

135. ———— Imprisonment for allowance remaining unpaid after execution of warrant—*Criminal Procedure Code, s. 488—Maintenance—Wife—Breach of order for monthly allowance—Warrant for levying arrears for several months—Act I of 1868, s. 2, cl. 18—"Imprisonment."*—Where a claim for accumulated arrears of maintenance for several months arising under several breaches of an order for maintenance is dealt with in one proceeding, and arrears levied under a single warrant, the Magistrate acting under s. 488 of the Criminal Procedure Code has no power to pass a heavier sentence in default than one month's imprisonment, as if the warrant only related to a single breach of the order. *Per* EDGE, *C.J.*—S. 488 contemplates that a separate warrant should issue for each separate monthly breach of the order. *Per* STRAIGHT, *J.*—The third paragraph of s. 488 ought to be strictly construed and, as far as possible, construed in favour of the subject. Under the section, a condition-precedent to the infliction of a term of imprisonment is the issue of a warrant in respect of each breach of the order directing maintenance, and where, after distress has been issued, *nulla bona* is the return. The section contemplates one warrant and one punishment, and not a cumulative warrant and cumulative punishment. Also *per* STRAIGHT, *J.*—With reference to s. 2, cl. (18), of the General Clauses Act (I of 1868), "imprisonment" in s. 488 of the Criminal Procedure Code may be either simple or rigorous. *Per* OLDFIELD, *J.*—A claim for accumulated arrears of maintenance arising under several breaches of order may be dealt with in one proceeding, and arrears levied under a single warrant. QUEEN-EMPRESS *v.* NARAIN [I. L. R., 9 All., 240

(*b*) IMPRISONMENT AND FINE.

136. ———— Case under s. 21, Cattle Trespass Act, 1871—*Sentence of fine or imprisonment—Default in payment of compensation.*—It is not lawful to pass a sentence of fine or imprisonment in default of payment of the compensation awarded in a matter under s. 21 of the Cattle Trespass Act, 1871. IN THE MATTER OF KETABDI MUNDUL . . . . . 2 C. L. R., 507

137. ———— Contempt of Court—*Imprisonment added to fine—Trial of case of contempt.*—Where, in punishing for contempt of Court, the summary procedure sanctioned by s. 163 of the Code of Criminal Procedure, 1861, is followed, the Court must sit as the Court before which the offence was committed, and not in any other capacity, and is bound to take cognizance of the contempt on the day on which it was committed. In such a case imprisonment cannot be added to fine as a punishment. In a case in which it was dealt with in a summary manner, the offence must, under s. 163, be tried by an officer other than the person before whom the contempt was committed. QUEEN *v.* CHUNDER SEEKUR ROY [12 W. R., Cr., 18

138. ———— Making false charge—*Penal Code, s. 211—Imprisonment with or without*

SENTENCE—*continued.*

6 IMPRISONMENT—*continued.*

fine—A prisoner convicted under the second clause of s 211 of the Penal Code should be sentenced to imprisonment, with or without fine, and not to fine alone REG *v.* RAMA BIN RABHAJI . 1 Bom., 34

139 ———— Conviction under Military Cantonment Act (Bom Act III of 1867)—*Simultaneous sentence of fine and imprisonment*—In cases of convictions under ss. 11 and 12 of the Military Cantonment Act (*Bom Act III of 1867*), a simultaneous sentence of fine and imprisonment in default of the payment of the fine can only be awarded, under s 14 of the Act, in the event of no property sufficient for the payment of the fine being found. REG *v.* LADU . . 7 Bom., Cr, 87

140 ———— *Conviction under s. 48*, Act XXIV of 1859—*Mad. Act V of 1865—Procedure to enforce fine*—Persons convicted under s. 48 of the Police Act (XXIV of 1859) are not liable to both fine and imprisonment in default of payment The procedure to be followed in enforcing the fine is that laid down in Madras Act V of 1865 ANONYMOUS . . 3 Mad, Ap, 9

ANONYMOUS . . 7 Mad., Ap., 22

141. ———— Attempt to commit suicide—*Penal Code, s. 309.*—A prisoner found guilty, under s. 309 of the Penal Code, of an attempt to commit suicide, must be sentenced to some imprisonment, and not merely to payment of a fine REG. *v* CHANVIOVA . . . . . 1 Bom., 4

(c) IMPRISONMENT IN DEFAULT OF FINE

142. —— Additional imprisonment—*Rigorous imprisonment*—Additional imprisonment in default of payment of fine for the offence of dacoity must be rigorous QUEEN *v* SRIMONTO KOTAL . . . . . 7 W R, Cr, 31

143. ———— Limitation of imprisonment in summary trials—*Fine—Criminal Procedure Code, 1852, ss. 32 33, 262—Penal Code, s 67—Act VIII of 1852*—In cases of simple imprisonment ordered as a process for enforcement of payment of fine, the rule of s. 262 of the Criminal Procedure Code limiting the period of imprisonment in summary trials does not apply, as that section only refers to substantive sentences of imprisonment. EMPRESS *v.* ASGHAR ALI . I. L. R., 6 All., 61

. . . .

a term exceeding six months or to fine exceeding R200" in s 167 of the Presidency Magistrates' Act (IV of 1877) are confined in their meaning to substantive sentences, and cannot be extended to include an award of imprisonment in default of payment of fine, the operation of which is contingent only on the fine not being paid. IN THE MATTER OF JUTHARAM DAVAY . I. L. R., 2 Mad., 30

145. ———— Committing affray—*Penal Code, s. 160—Criminal Procedure Code, 1872,*

SENTENCE—*continued*

5. IMPRISONMENT—*continued.*

s 309—Prisoners were convicted of having committed an offence punishable under s 160 of the Penal Code, and were sentenced to pay a fine of R25 each, or in default to be rigorously imprisoned for thirty days, the full term of imprisonment under the section *Held* by a majority of the High Court (KINDERSLEY, *J*, dissenting) that having regard to the provisions of s 309 of the Criminal Procedure Code (Act X of 1872), the sentence was legal REG *v* MUHAMMAD SAIB . I. L. R, 1 Mad., 277

146. ———— Criminal Procedure Code, s. 33—*Penal Code, s 65*—S 33 of the Code of Criminal Procedure, 1882, does not authorize a Magistrate to pass a sentence in default of payment of fine in excess of the term prescribed by s. 65 of the Indian Penal Code *Reg v Mahammad Saib, I L R, 1 Mad, 277*, was overruled in 1881 QUEEN-EMPRESS *v.* VENKATESAGADU

[I L. R., 10 Mad., 165

ANONYMOUS . I L. R., 10 Mad., 166 note

147 ———— Assault—*Penal Code, ss 65 and 352.*—*In a case of assault, a sentence inflicting* a fine of R50 and awarding imprisonment for one month in default of payment of the fine is illegal, with reference to ss. 65 and 352 of the Penal Code IN THE MATTER OF JEHAN BUKSH

[16 W R, Cr, 42

148. ———— Sentence under Bom. Act VII of 1867, s. 31—*Simple imprisonment*—Imprisonment in default of payment of a fine inflicted under Act (*Bombay*) *VII of 1867, s 31*, ought to be simple, not rigorous REG *v.* BECHAR KHUSHAL . . . 5 Bom., Cr., 43

149. ———— Conviction under Cattle Trespass Act (III of 1857)—*Fine and imprisonment*—Certain persons were convicted under s. 13, Act III of 1857, and sentenced to fifteen days' imprisonment and a fine, or in default imprisonment for the term of seven days. No provision was made in the Act for awarding imprisonment in default of payment of fine, but the prisoners were liable under the section to six months' imprisonment and a fine of R500 The High Court refused to interfere with the sentence passed ANONYMOUS

[5 Mad., Ap., 21

But *see* ANONYMOUS . 7 Mad, Ap, 23

150. ———— Contempt of Court—*Criminal Procedure Code, 1861, s 163—Power of Magistrate*—The Magistrate convicted the defendant of contempt of Court under s 163 of the Code of Criminal Procedure, and sentenced him to pay a fine of R10, or in default two days' imprisonment. *Held* that the Magistrate had not exceeded his powers ANONYMOUS . . 6 Mad., Ap., 18

151. ———— Offence under Income Tax Act (IX of 1869)—*Power of Magistrate.*—A Magistrate has no power under s. 55, *Act IX of 1869*, to sentence to imprisonment in default of the payment of the fine imposed for not paying income tax. QUEEN *v* NOBIAR CHAND KOONDOO

[14 W. R., Cr., 70

SENTENCE—*continued.*

5. IMPRISONMENT—*continued.*

152. ——— **Offence under Income Tax Acts (IX of 1869 and XXIII of 1869)**—*General Clauses Consolidation Act (I of 1868), s. 5.*—The Income Tax Act (Act IX of 1869, supplemented by Act XXIII of 1869) having been passed subsequently to the General Clauses Act (I of 1868), s. 5 of the latter authorized the award of imprisonment in default of payment of the fine imposed under s. 25 of the former. REG. *v.* SANGAPA BIN BASHIAPA . . . **7 Bom., Cr., 76**

153. ——— **Offences under Madras Abkari Act (III of 1864), ss. 21, 22, 30, 32**—*Penal Code, s. 64.*—Prisoners were sentenced to fines under ss. 21 and 22 of Madras Act III of 1864, and in default of payment of fine to rigorous imprisonment. *Held* that, as fine in these cases was the only assignable punishment, and by ss. 30, 31, and 32 a specified procedure is laid down for the levy of the penalty, s. 64 of the Penal Code had no application. ANONYMOUS . **6 Mad., Ap., 40**

154. ——— **Offence under License Acts (XXI of 1867, s. 15, and XXIX of 1867, s. 3)**—*Power of Magistrate.*—Where a Magistrate sentenced a person, who had neglected to take out a license, under Act XXI of 1867, s. 15, and Act XXIX of 1867, s. 3, to pay a fine of R10, and in default of payment to suffer seven days' simple imprisonment, the High Court reversed so much of the sentence as awarded imprisonment, as the trying Magistrate had under the Act no power to make such an order. REG. *v.* CHENAPPA VALAD NAGAPPA **[5 Bom., Cr., 44**

155. ——— **Neglect to comply with order for maintenance**—*Criminal Procedure Code, 1882, s. 488—Subsequent offer to pay, Effect of, on sentence.*—A sentence of imprisonment awarded under s. 488 of the Code of Criminal Procedure for wilful neglect to comply with an order to pay maintenance is absolute, and the defaulter is not entitled to release upon payment of the arrears due. BIYACHA *v.* MOIDIN KUTTI **I. L. R., 8 Mad., 70**

156. ——— **Committing public nuisance**—*Penal Code, s. 290.*—The sentence of imprisonment passed in default of the payment of a fine inflicted under s. 290 of the Penal Code (for committing a public nuisance) should be one of simple, not rigorous, imprisonment. REG. *v.* SANTU BIN LAKHAPPA KORE . . **5 Bom., Cr., 45**

157. ——— *Penal Code, s. 290.*—A sentence of rigorous imprisonment in default of payment of fine for the offence of nuisance under s. 290 of the Penal Code is legal. QUEEN *v.* YELLAMANDU . . **I. L. R., 5 Mad., 157**

Contra, see REG. *v.* SANTU BIN LAKHAPPA KORE **[5 Bom., Cr., 45**

158. ——— **Salt Act (XVII of 1840), Breach of**—*Mad. Reg. I of 1805.*—A sentence of imprisonment in default of payment of a fine imposed under the provisions of Act XVII of 1840 is illegal. QUEEN *v.* AMIRTAM **[I. L. R., 4 Mad., 335**

159. ——— *Substantive sentence—Mad. Reg. I of 1805.*—Act XVII of 1840 authorizes a substantive sentence of imprisonment. ANONYMOUS CASE . **I. L. R., 4 Mad., 335 note**

160. ——— **Offence under Salt Revenue Act (XXXI of 1850)**—*Criminal Procedure Code, 1861, ss. 21 and 45—Penal Code, s. 65.*—S. 45 of the Criminal Procedure Code made applicable the provisions of s. 65 of the Penal Code not only to offences falling under that Code as defined in its 40th section, but to every case in which a Magistrate had jurisdiction under s. 21 of the Criminal Procedure Code. Imprisonment for one month awarded in default of payment of a fine under s. 3 of the Salt Revenue Act (XXXI of 1850) was accordingly reduced to three weeks' simple imprisonment. REG. *v.* VITHOBA BIN SOMA **[5 Bom., Cr., 61**

161. ——— **Non-payment of taxes**—*Bombay District Municipal Act (Bom. Act VI of 1873), s. 84, as amended by Bombay District Municipal Act (Bom. Act II of 1884), s. 49—Penal Code (Act XLV of 1860), s. 40 and s. 64—Penalty, "Fine"—Imprisonment in default of payment of penalty.*—There is no distinction between the word "penalty" as used in the Bombay District Municipal Act (Bombay Act VI of 1873) and the word "fine" as used in s. 64 of the Indian Penal Code (Act XLV of 1860). Imprisonment can therefore be awarded in default of any penalty inflicted under s. 84 of the Municipal Act as amended by Bombay Act II of 1884. IN RE LAKMIA **[I. L. R., 18 Bom., 400**

162. ——— **Excess charge and fare, Non-payment of**—*Railways Act (IX of 1890), s. 113—Power of Magistrate to impose imprisonment in default—Fine.*—S. 113, sub-s. (4), of the Indian Railways Act (IX of 1890), which directs that, on failure to pay on demand excess charge and fare when due, the amount shall on application be recovered by a Magistrate as if it were a fine, do not authorize the Magistrate to impose imprisonment in default. The excess charge and fare referred to in the section is not a fine, though it may be recovered as such. QUEEN-EMPRESS *v.* KUIRAPA **[I. L. R., 18 Bom., 440**

163. ——— **Penal Code (Act XLV of 1860), ss. 40 and 64**—*Madras Towns Nuisances Act (Mad. Act III of 1889), ss. 3 and 11—Magistrate, Jurisdiction of.*—Where a conviction has taken place under the Towns Nuisances Act (Madras), 1889, s. 8, a Magistrate has jurisdiction to impose a fine and also to pronounce a sentence of imprisonment in default of payment of the fine. QUEEN-EMPRESS *v.* RAPPEL **[I. L. R., 18 Mad., 490**

164. ——— **ss. 65, 67**—*Imprisonment in default of fine—Madras Towns Nuisances Act (Mad. Act III of 1889), s. 3, cl. 10.*—An accused having been convicted of an offence under s. 3, cl. 10, of the Towns Nuisances Act

SENTENCE—*continued.*

5. IMPRISONMENT—*continued*

(Madras), 1889, and sentenced to pay a fine of R8 and in default of payment to undergo simple imprisonment for a week —*Held* (1) that s 67 of the Indian Penal Code refers solely to cases in which the offence is punishable with fine only has no application to offences punishable either with imprisonment or

[I L R, 22 Mad., 233

165 ———— Sentence, Powers of Appellate Court in respect of—*Magistrate, Jurisdiction of—Criminal Procedure Code (1882) s 423—Enhancement of sentence*—Where a District Magistrate acting as an Appellate Court in a criminal case altered a sentence of four months' rigorous imprisonment to one of three months' rigorous imprisonment, but imposed a fine of R10, or in default a further term of six weeks' rigorous imprisonment,—*Held* that, as the latter sentence might involve an enhancement of the former, such sentence was in excess of the powers of the Magistrate having regard to s 423 of the Code of Criminal Procedure QUEEN EMPRESS *v* ISHRI

[I. L. R., 17 All, 67

166 ———— *Powers of Appellate Court as to alteration of sentence—Alteration so as to enhance sentence—Criminal Procedure Code (1882), s 423*—The accused was convicted of criminal breach of trust and sentenced to nine months' rigorous imprisonment On appeal, the conviction was upheld, but the sentence was altered to one of six months' rigorous imprisonment and a fine of R1 000, or, in default of payment, three months' further rigorous imprisonment The accused applied to the High Court in revision, contending that the alteration of the sentence amounted to an *enhancement of the sentence* beyond the powers of the Appellate Court under s 423 of the Code of Criminal Procedure (Act X of 1882) *Held* that there was no enhancement of the sentence *Queen Empress v Ishri, I L R, 17 All, 67,* distinguished. QUEEN EMPRESS *v.* CHAGAN JAGANNATH . I. L. R, 23 Bom, 439

167. ———— *Criminal Pro-*

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fine of R20, or in default of payment to 15 days' rigorous imprisonment. This alteration of sentence was held not to amount to an enhancement of the sentence such as was contrary to the terms of s. 423 of the Criminal Procedure Code No general rule can be laid down to determine what is or is not an enhancement of sentence when only a portion of a sentence is altered to a punishment of a lesser degree of severity In each case the Court has to consider what is the effect of the alteration *Queen-Empress v Chagan Jagannath, I. L R, 23 Bom, 439,* dissented from. RAKHAL RAJA *v* KHIRODE PERSHAD DUTT . I. L. R., 27 Calc, 175

6. SENTENCE AFTER PREVIOUS CONVICTION

168 ———— Penal Code, s 75—*Receiving stolen property acquired by dacoity*—Where soon after his release on expiry of a sentence of seven years' imprisonment on conviction of "receiving stolen property acquired by dacoity" a person is convicted of house-breaking and theft, he is sufficiently punished by a sentence of seven years' transportation, a sentence of transportation for life is too severe *It is not the intention of the Legislature* that a previous conviction should so enormously enhance the heinousness of petty offences IN THE MATTER OF SHAMJEE NASHYO 1 C. L. R., 481

169. ———— *Previous con-*

after the Code came into operation QUEEN *v* HURPAUL . 4 W. R., Cr, 9

REG *v* KUSHYA BIN YESU 4 Bom., Cr, 11

170 ———— *Previous conviction not under Penal Code*—An accused person can only be punished under s. 75 of the Penal Code where the previous conviction has been under that Code BUDHUN RUJWAR *v* EMPRESS

[10 C. L. R., 392

171 ———— *Evidence of previous conviction*—To warrant a sentence awarding an additional punishment under s 75 of the Penal Code, as on a second conviction, the evidence that there was a previous conviction against the accused under the Penal Code must be clear and precise. QUEEN *v* NAIMUDDI SHEIKH *alias* ABBAS SHEIKH . . 14 W. R, Cr, 7

172. ———— *Amalgamation of sentence—Transportation*—Sentence of transportation for fourteen years under s 392 of the Penal Code annulled as the offence for which such sentence was passed was not committed subsequently to any conviction, and s 75 had therefore been improperly applied. *Semble*—That a Sessions Judge cannot (under s. 75 of the Penal Code or otherwise) by amalgamating a sentence which he is competent to pass upon a prisoner with a sentence under which such prisoner is already undergoing imprisonment, and commuting the latter sentence, condemn such prisoner to a longer period of transportation than he is liable to suffer for the crime of which he has last been convicted. REG *v* SAKYA VALAD KAVJI

[5 Bom, Cr, 36

173 ———— *Attempt to commit offence—Penal Code, Ch. XXIII.*—S. 75 of the Penal Code is restricted to offences under

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*continued.*

Chs. XII and XVII of the Penal Code when the term of imprisonment awardable is three years' imprisonment and upwards, and does not refer to an attempt to commit any of those offences (Ch. XXIII), nor can any case be brought within it merely because the punishment that may be given for it extends to three years and upwards. QUEEN v. DAMU HAREE . . **21 W. R., Cr., 35**

174. ——— *Previous convictions of offence not under Ch. XVII of Penal Code.*—An offender is only liable to enhanced punishment, under s. 75 of the Penal Code, for an offence punishable under Ch. XVII, after having been punished with imprisonment for the same offence or for an offence punishable under the same chapter. QUEEN v. PUBON . . **5 W. R., Cr., 66**

175. ——— *Previous offence under Ch. XII or Ch. XVII of the Penal Code.*—*Held* that, where a person commits an offence punishable under Ch. XII or Ch. XVII of the Penal Code punishable with three years' imprisonment, and, previously to his being convicted of such offence, commits another such offence punishable under either of such chapters, he is not subject, on being convicted of the second offence, to the enhanced punishment provided in s. 75 of the Penal Code. EMPRESS v. MEGHA . **I. L. R., 1 All., 637**

176. ——— *Additional sentence—Sufficiency of sentence.*—The object of s. 75 of the Penal Code is to provide for an additional sentence, not a less severe sentence, on a second conviction. Recourse should not be had to that section if the punishment for the offence committed is itself sufficient. SHEO SARAN TATO v. EMPRESS **[I. L. R., 9 Calc., 877**

177. ——— *Enhanced punishment—Transportation for seven years—Imprisonment.*—The accused, having been previously convicted of offences punishable, under Ch. XII or Ch. XVII of the Penal Code, with imprisonment for a term of three years or upwards, was subsequently convicted of an offence under one of those chapters punishable with imprisonment which may extend to three years, and sentenced to imprisonment for seven years. *Held* that a sentence of imprisonment for seven years was illegal. Under s. 75 of the Penal Code, the accused might be transported for life, but he could not be imprisoned for a longer period than six years. EMPRESS v. MAHADU **[I. L. R., 6 Bom., 690**

178. ——— *Further sentence after actual sentence—Penal Code, s. 46.*—Where a first class Subordinate Magistrate sentenced a prisoner to six months' imprisonment under s. 457 of the Penal Code, and, finding that the prisoner was liable to enhanced punishment under s. 75 of the Penal Code, sentenced the prisoner to six months' further imprisonment under s. 46 of the Code of Criminal Procedure, the latter sentence was set aside by the High Court. ANONYMOUS **5 Mad., Ap., 3**

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*continued.*

179. ——— *Prisoner having had several previous convictions.*—Where the prisoner had already been several times convicted of similar offences, the Magistrate should have committed him to the Court of Session, with a view to his being punished as after previous conviction under s. 75 of the Penal Code. REG. v. GANU LADU . . **2 Bom., 132: 2nd Ed., 126**

180. ——— *Imprisonment—Power of Magistrate—Counterfeiting marks on documents.*—The prisoner was convicted under s. 475 of the Penal Code, and, having been previously convicted of an offence punishable under Ch. XVII of the Code, the Magistrate sentenced him to four years' rigorous imprisonment. *Held* that the Magistrate had power to pass sentence of two years' imprisonment only under s. 75, Penal Code. ANONYMOUS . . . . . . **6 Mad., Ap., 3**

181. ——— *Attempt to commit offence—Penal Code, Ch. XVII, s. 457—Lurking house-trespass.*—A person, having been convicted of an offence punishable under s 457 (Ch. XVII) of the Penal Code, was subsequently guilty of an attempt to commit such an offence. *Held* that the provisions of s. 75 of the Penal Code were not applicable to such person. EMPRESS v. RAM DAYAL **[I. L. R., 3 All., 773**

182. ——— *Conviction of an attempt to commit theft—Previous conviction of theft.*—(MELVILL, J., *dissentiente*).—If a person who has been convicted of an offence punishable, under Ch. XII or Ch. XVII of the Penal Code, with imprisonment for a term of three years or upwards, is convicted of an attempt to commit any such offence, he does not thereby become liable to the enhanced punishment allowed by s. 75 of the Code. EMPRESS v. NANA RAHIM . . **I. L. R., 5 Bom., 140**

183. ——— and ss. 179, 511—*Attempt to commit an offence—Enhancement of sentence for previous conviction—Previous conviction.*—A person who has been convicted of the offence of theft (an offence punishable under Ch. XVII of the Penal Code) does not, on being convicted of an attempt to commit the offence of theft, become liable to the enhanced punishment allowed by s. 75 of the Penal Code. QUEEN-EMPRESS v. SRICHARAN BAURI . . **I. L. R., 14 Calc., 357**

184. ——— and ss. 457 and 511—*Attempt to commit house-breaking by night after previous conviction.*—S. 75 of Act XLV of 1860 does not apply to the case of an attempt to commit the offence punishable under s. 557 of the Code, after previous convictions of offences falling within Ch. XII or Ch. XVII, such offence being punishable under s. 511. *Sheo Saran Tato* v. *Empress, I. L. R., 9 Calc., 877; Empress of India* v. *Ram Dayal, I. L. R., 3 All., 778; Empress* v. *Nana Rahim, I. L. R., 5 Bom., 140; Queen-Empress* v. *Sricharan Bauri, I. L. R., 14 Calc., 357,* referred to. QUEEN-EMPRESS v. AJUDHIA . . . **I. L. R., 17 All., 120**

SENTENCE—*continued.*

6. SENTENCE AFTER PREVIOUS CONVICTION—*concluded.*

185 ——— and s. 511—*Attempt to commit an offence after previous conviction* —S 75 of the Penal Code does not apply to cases which are confined to s 511 of that Code. The offences which come under s 511 must be punished entirely irrespective of s 75 *Queen-Empress v Ajudhia, I L R, 17 All, 120,* approved QUEEN-EMPRESS v BHAROSA . I. L. R, 17 All, 123

7 SOLITARY CONFINEMENT

186 ——— s. 74—*Duration of solitary confinement* —Solitary confinement must not be imposed for the whole term of a person's imprisonment. Under s. 74 of the Penal Code, it is to be imposed at intervals. IN THE MATTER OF NYAN SUK METHER . 3 B. L. R, A. Cr, 49

187. ——— s 73—*Criminal Proce-*

ANNU KHAN . . . I. L. R, 6 All., 83

8 TRANSPORTATION

188. ——— Measure of punishment—*Murder* —A sentence of transportation other than for life is illegal in the case of a prisoner convicted of murder. QUEEN v BHOOTOO MULLICK [6 W. R., Cr, 85

189. ——— *Reasons for sentence—Criminal Procedure Code, 1861, s 380* —S 380 of the Code of Criminal Procedure, 1861, did not authorize a Sessions Judge to sentence a prisoner convicted of murder to anything less than transportation for life, and it required the Judge, if he sentence such prisoner to transportation for life instead of capitally, to assign his reasons for so doing QUEEN v DABEE . W. R., 1864, Cr., 27

190 ——— *Unpremeditated murder* —Where murder is not premeditated, transportation for life is a sufficient punishment QUEEN v RAM CHURN KURMOKAR [24 W. R., Cr, 28

191. ——— *Penal Code, ss. 307 and 394—Attempt to murder—Causing hurt in committing robbery* —Neither under s. 307 nor under s. 394 of the Penal Code can a prisoner be sentenced to fourteen years' transportation, the punishment awardable under those sections being transportation for life, or rigorous imprisonment for ten years, with fine. QUEEN v BHAMOUR DOOSADH [7 W. R., Cr, 41

192. ——— *Waging war*

life or imprisonment of either description which may extend to seven years. Where such a prisoner was

sentenced to ten years' transportation, the sentence was held to be illegal QUEEN v KEIPA SINGH [3 W. R., Cr, 16

193. ——— *Killing a wizard* —A sentence of death was commuted into one of transportation for life in the case of a prisoner who committed murder in the belief that the deceased was a wizard and the cause of his child's illness, and that by killing the deceased the child's life might be saved. QUEEN v OCRAM SUNGRA [6 W. R., Cr, 82

rather by way of retaliation for injury than under the influence of any worse passion QUEEN v TONOO [6 W. R., Cr, 46

195. ——— *Reckless assault with deadly weapon* —The punishment of transportation for life was inflicted instead of capital punishment in a case where there was no intention to cause death, but a reckless assault with a deadly weapon which inflicted an injury likely in the ordinary course of nature to cause death QUEEN v KHOAZ SHEIKH . . 5 W. R., Cr., 20

196. ——— Commutation of capital sentence—*Likelihood of accident at execution* —Where the condition of the convict rendered it likely that, if he were hanged, decapitation would ensue, the sentence of death was commuted to one for transportation for life BOODHOO JOLAHA v EMPRESS . . . . 2 C. L. R., 215

197. ——— Penal Code, s. 59—*Measure of punishment—Penal Code, s. 412.*—A sentence of transportation under ss. 412 and 59 of the Penal Code cannot exceed ten years QUEEN v MOHANUNDO BHUNDARY . . . 5 W. R., Cr., 16

198 ——— *Measure of punishment—False evidence and forgery* —Under s 59 of the Penal Code, no sentence of transportation for a shorter period than seven years can be passed on any charge Therefore where a prisoner was convicted on separate charges of giving false evidence in a judicial proceeding under s. 193, and of forgery under s. 467, and sentenced to seven years' transportation for the first offence and a further period of transportation for three years for the second offence, the second sentence was quashed as illegal. QUEEN v GOUR CHUNDER ROY . 8 W. R., Cr, 2

199. ——— *Criminal Pro-*

with imprisonment for seven years or upwards. It may, in passing sentence for the offence, commute the imprisonment to transportation, but it cannot commute the sentence after the sentence of imprisonment has been passed. QUEEN v. PREM CHUND OUSOWAL [W. R, 1864, Cr., 35

SENTENCE—*continued.*

8. TRANSPORTATION—*continued.*

200. ———————— *Commutation of sentence after amalgamating two sentences.*—To bring s. 59 of the Penal Code into operation, the punishment awarded on one offence alone must be seven years' imprisonment, and cannot be made up by adding two sentences together and then commuting the amalgamated period to transportation. QUEEN *v.* MOOTKEE KORA . . . 2 W. R., Cr., 1

QUEEN *v.* TONOORAM . 3 W. R., Cr., 44

QUEEN *v.* SHONAULLAH . 5 W. R., Cr., 44

201. ———————— *Commutation of sentence—Imprisonment in default of payment of fine.*—S. 59 of the Penal Code does not authorize the substitution of transportation for the imprisonment to which a Court can sentence an offender in default of payment of fine. KUNHUSSA *v.* QUEEN [I. L. R., 5 Mad., 28

202. ———————— *Imprisonment —Penal Code, s. 377—Unnatural offence.*—When an offence is punishable either with transportation for life or imprisonment for a term of years, if a sentence of transportation for a term less than life is awarded, such term cannot exceed the term of imprisonment. QUEEN *v* NAIADA . . I. L. R., 1 All., 43

203. ———————— *Commutation of sentence—Powers under Act XV of 1862, s. 1—Imprisonment or transportation.*—An officer who, in the exercise of the powers described in s. 1, Act XV of 1862, had passed a sentence of imprisonment for seven years, had power, under s. 59 of the Penal Code, to commute that sentence into one of transportation for the like period. JACKSON, *J.*, dissented. QUEEN *v.* BOODHOOA

[B. L. R., Sup. Vol., 839: 9 W. R., Cr., 6

204. ———————— *Commutation of sentence—Penal Code, ss. 376, 511—Attempt at rape.* —*A* was convicted of an attempt to commit rape, and was sentenced by the Judge to rigorous imprisonment for seven years, which he commuted, under s. 59 of the Penal Code, to transportation for the same term. *Held* that, under ss. 376 and 511 of the Penal Code, a sentence of imprisonment for the offence committed could not be for a longer term than five years, and such sentence could not be commuted, under s. 59, to transportation for a longer term. QUEEN *v.* MEHIAM 1 B. L. R., A. Cr., 5: 10 W. R., Cr., 10

205. ———————— *Commutation of sentence—Imprisonment.*—When the law gives the alternative punishments of death, transportation for life, or rigorous imprisonment extending to ten years, a sentence of fourteen years' transportation is illegal. If the Judge thinks it proper to pass a sentence of transportation short of life, he should pass a sentence of imprisonment for the term fixed by law, and then, under s. 59, change it to transportation for that period. QUEEN *v.* RUGHOO

[W. R., 1864, Cr., 30

206. ———————— Successive sentences of transportation—*Criminal Procedure Code, 1861, s. 46.*—A sentence of transportation for two periods, each of seven years, one sentence to commence after the expiration of the other, was not warranted by s. 46 of the Code of Criminal Procedure, that section allowing such sentences only when the penalties consist of imprisonment. QUEEN *v.* KASSIM ALLY [11 W. R., Cr., 10

9. WHIPPING.

207. ———————— Sentence giving both whipping and imprisonment—*Power of Magistrate—Act XIII of 1856, s. 27.*—Act XIII of 1856, s. 27, gave a Magistrate power to award either imprisonment or whipping, but not both, and a sentence which gave both was illegal. QUEEN *v.* FYZO . . . . Bourke, O. C., 269

208. ———————— Person convicted of two or more offences under Penal Code—*Imprisonment and whipping.*—When a person is convicted at one time of two or more offences punishable under the Penal Code, the Court is empowered to sentence the prisoner in the one case to rigorous imprisonment and in the other case to whipping under Act VI of 1864. ANONYMOUS . . 5 Mad., Ap., 18

209. ———————— Imprisonment in lieu of whipping—*Criminal Procedure Code, s. 395—Court not authorized to inflict fine in lieu of whipping.*—A Court has no power, under s. 395 of the Criminal Procedure Code, to revise its sentence of whipping by inflicting a fine. In cases where the sentence of whipping cannot be carried out, all that the Court can do is either to remit the whipping altogether or to sentence the offender, in lieu of such whipping or of so much of the sentence of whipping as was not carried out, to imprisonment, etc. The word "imprisonment" in s. 395 of the Criminal Procedure Code means a substantive sentence of imprisonment, and not imprisonment for default in payment of a fine. QUEEN-EMPRESS *v.* SHEODIN [I. L. R., 11 All., 308

210. ———————— Ground for sentence—*Statement of grounds in judgment.*—When whipping is imposed as a punishment, the grounds for that form of punishment should be set out in the judgment. BADIYA *v.* QUEEN . I. L. R., 5 Mad., 158

211. ———————— Sentence of imprisonment in lieu of whipping—*Criminal Procedure Code (1882), s. 395—Powers of Magistrate.*—Where a prisoner who has been sentenced to whipping is found to be unfit to undergo such sentence, and such sentence is accordingly commuted to one of imprisonment, such substituted term of imprisonment must not bring the total term to which such prisoner is sentenced up to a term in excess of the maximum which the Court passing the sentence is competent to inflict. *Queen-Empress* v. *Sheodin, I. L. R., 11 All., 308,* referred to. QUEEN-EMPRESS *v.* RAM BARAN SINGH . . I. L. R., 21 All., 25

SENTENCE—*continued.*

10 POWER OF HIGH COURT AS TO SENTENCES.

(*a*) GENERALLY.

212. ——— **Power of High Court to interfere with sentence**—*After a sentence has once been passed by a competent authority* the High Court has no more power to interfere with it than a private individual, except upon appeal or on a reference, or by way of revision, as provided by the Code of Criminal Procedure. QUEEN *v* PUDAN [7 W. R., Cr., 1

213. ——— **Consolidation by High Court of sentences passed by lower Court**—*Separate sentences, Illegality of.*—When the circumstances of the case justify, the High Court may substitute one aggregate or consolidated sentence for separate sentences passed by the Court below sufficient to meet the offence of which the accused has been convicted. HRIDOY MONDAL *v* JAGANANDA DAS [4 C. W N., 245

(*b*) ENHANCEMENT

214. ——— **Power to enhance**—*Criminal Procedure Code, 1861, s 419—Sessions Judge*—A Sessions Judge had, under s. 419 of the Criminal Procedure Code, 1861, no authority to enhance a sentence on appeal QUEEN *v.* BULORAM DOSS [4 W. R., Cr, 20

215. ——— *Acquittal by Sessions Judge and assessors*—Where a Sessions Judge and assessors acquit in a case of murder, but *find the prisoner guilty of a minor charge*, the Appellate Court has no power to interfere to enhance the punishment awarded. IN THE MATTER OF TOYAB SHAIKH . . 1 Ind. Jur, N. S., 58

. . . . . .

sentence, to enhance any punishment that had been awarded. ANONYMOUS I. L. R., 1 Mad., 54

217. ——— *Criminal Procedure Code, 1872, s 18—"Modify."*—The word "modify" in s. 18, cl. 2, of the Code of Criminal Procedure did not include the power to enhance a sentence: consequently where an Assistant Sessions Judge passed a sentence of more than three years' imprisonment, the Sessions Judge could not enhance it. IMPERATRIX *v.* RAMA PREMA [I. L. R., 4 Bom., 239

218. ——— *Criminal Procedure Code, 1872, s. 280—Enhancement without notice*—Where a District Magistrate on appeal made an order under the Code of Criminal Procedure, s. 280, enhancing the sentence appealed from, without having served notice on the appellant, the order of enhancement was quashed as illegal. QUEEN *v.* HEEMUT ALI . . . 24 W. R., Cr, 72

SENTENCE—*continued.*

10 POWER OF HIGH COURT AS TO SENTENCES—*continued*

219 ——— **Exercise of power**—*Cri-*

. . .

[13 B L R., Ap., 23 22 W. R., Cr, 5

220. ——— *Criminal Procedure Code, 1872, s 280 (1861—69, s 419)*—The High Court on appeal, being of opinion that the case was one where no circumstances of mitigation were set forth, and where, without any sufficient reason, the Judge had awarded a punishment which in ordinary cases would be quite inadequate enhanced the *punishment under s. 280, Act X of 1872.* QUEEN *v* GOOJEER PANDAY [11 B. L R., Ap, 3. 20 W R., Cr, 21

221. ——— *Enhancement of sentence on appeal—Criminal Procedure Code (Act X of 1882), ss 423, 439*—A head constable was convicted under s 330 of the Penal Code, and at a trial before a Sessions Judge sentenced to four months' simple imprisonment The prisoner appealed. The High Court, in dismissing the appeal, directed, as a Court of Revision that the sentence passed should be enhanced. METHER ALI *v* QUEEN EMPRESS . I. L R., 11 Calc, 530

222. ——— *Criminal Procedure Code, 1872, s 280—Alteration of conviction from culpable homicide to murder*—Under s. 280 of the Code of Criminal Procedure, the High Court altered the conviction in this case from culpable homicide into one for murder, and enhanced the sentence accordingly QUEEN *v* ROHEEM [21 W R., Cr, 39

223. ——— *Enhancement*

. . .

Head Assistant Magistrate, however, enhanced the sentence passed on all *Held* that the enhanced *sentence passed on the prisoners who did not appear* and who did not appeal must be annulled. ANONYMOUS . . . . . 8 Mad., Ap, 8

(*c*) MITIGATION

. . . . . .

or altered on appeal by the Sessions Judge, on the ground that the sentence was excessive. IN THE MATTER OF THE PETITION OF BISSUMBHUR SHAHA [B. L. R., Sup. Vol., 484: 6 W. R., Cr., 7

Overruling QUEEN *v.* RAMDHONE MUNDUL [4 W. R., Cr., 15

225. ——— *Criminal Procedure Code, 1861, s 405*—The High Court (like the Sessions Judge) could not, under s. 445, Criminal

SENTENCE—*continued.*

10. POWER OF HIGH COURT AS TO SENTENCES—*continued.*

Procedure Code, 1861, nullify the verdict of a jury by interfering to lessen the punishment. S. 405 referred to cases where the offence was proved, but where the punishment inflicted was held to be too severe, and not to cases where the conviction itself was considered improper. QUEEN *v.* BISSONATH MITTER [6 W. R., Cr., 6

226. ———— Exercise of powers—*Case submitted for consideration of Government.*—If there are circumstances which render expedient or advisable a mitigation of the sentence required by the law to be passed in cases of murder, the Judge may record these circumstances and submit them for the consideration of the Government, and the Government might, under s. 54, Criminal Procedure Code, 1861, act as to it seems proper. QUEEN *v.* DABEE [W. R., 1864, Cr., 27

(*d*) REVERSAL.

227. ———— "Reverse," Meaning of—*Criminal Procedure Code (Act XXV of 1861), ss. 419, 426.*—The word "reverse" in ss. 419 and 426, Code of Criminal Procedure (Act XXV of 1861), ss. 280 and 283 of Act X of 1872, meant to make void, to set aside, or annul, and not merely to change or turn into the contrary. QUEEN *v.* ELAHI BAX [B. L. R., Sup. Vol., 459: 5 W. R., Cr., 80

228. ———— Power to reverse sentence—*Criminal Procedure Code (Act XXV of 1861), s. 426.*—*A* was charged with the offence of voluntarily causing hurt to *C*, and *B* was charged with the same offence, and also with the offence of abetting *A*. The Magistrate found *A* guilty of the offence, and sentenced him to three months' rigorous imprisonment. The Magistrate also found *B* guilty of abetment of the offence of voluntarily causing hurt to *C*, and sentenced him to one month's rigorous imprisonment and a fine. On appeal, the Sessions Judge held that there was no evidence to convict *A*, and he accordingly released the prisoner. The appeal of *B*, however, was rejected, on the ground that the evidence, though it did not prove him guilty of abetment, proved him guilty of voluntarily causing hurt; and therefore, under s. 426 of the Code of Criminal Procedure, the sentence could not be reversed. No "error or defect either in the charge or in the proceedings on trial" was alleged. *Held* (by MITTER, *J.*) that s. 426 of the Code of Criminal Procedure did not apply. QUEEN *v.* MAHENDRANATH CHATTERJEE . . . 5 B. L. R., Ap., 39

S. C. GOUR MOHUN GHOSE *v.* MOHINDRO NATH CHATTERJEE . . . . 13 W. R., Cr., 78

229. ———— *Reversal of conviction—Reception of evidence inadmissible—Criminal Procedure Code, 1872, s. 280.*—If in a case tried by a jury the High Court finds that inadmissible evidence has been received, but that, after setting it aside, there is other evidence on the record on which the jury may find a verdict of guilty, the High Court

SENTENCE—*concluded.*

10. POWER OF HIGH COURT AS TO SENTENCES—*concluded.*

may reverse the conviction and sentence and order a new trial (s. 280 of the Code of Criminal Procedure). REG. *v.* AMRITA GOVINDA . 10 Bom., 497

SEPARATE ACQUISITION.

See HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—PRESUMPTION AND ONUS OF PROOF AS TO JOINT FAMILY.

SEPARATE CHARGES.

See CASES UNDER JOINDER OF CHARGES.

SEPARATE OFFENCES.

———— Conviction of—

See REVISION—CRIMINAL CASES—SENTENCES . B. L. R., Sup. Vol., 488

See CASES UNDER SENTENCE—CUMULATIVE SENTENCES.

See STOLEN PROPERTY, OFFENCES RELATING TO . I. L. R., 1 All., 379

———— Trial of—

See CASES UNDER JOINDER OF CHARGES.

SEPARATE PROPERTY.

See CASES UNDER HINDU LAW—JOINT FAMILY—NATURE OF, AND INTEREST IN, PROPERTY—ACQUIRED PROPERTY.

See CASES UNDER HUSBAND AND WIFE.

See SUCCESSION ACT, s. 4. [13 B. L. R., 383

SEQUESTRATION.

1. ———— Writ of sequestration—*Contempt of decree or order of Court—Rule of Bombay Supreme Court, 389—"Forthwith."*—The process of sequestration for contempt of a decree or order of Court, as it existed in the late Supreme Court, will, in a proper case, issue out of the High Court. The object of rule 389 of the Supreme Court Rules, which required a party who wished to enforce an order by sequestration to indorse upon the *copy* of the order served upon his opponent a memorandum to the effect that in default of performance of the order he would be liable to be arrested and to have his estate sequestered, was to enable the party making such endorsement to apply *ex-parte* for the writ. In the absence of such a memorandum indorsed upon the copy order, a party desirous of enforcing an order by sequestration must give proper notice to his opponent of his intention to apply for the writ. An

SEQUESTRATION—*concluded*

order commanding an act to be done "forthwith" is sufficiently in conformity with the rule that requires the time within which an act ordered to be done is to be performed to be specified in the order HARIVALLABHDAS KALLIANDAS *v* UTAMCHAND MANIKCHAND 8 Bom, O. C, 135

2. ——— Property out of jurisdiction of High Court—Power of High Court—The High Court will assert its jurisdiction for the purpose of preventing a writ of sequestration issued by it from becoming a mere form, and under proper circumstances will operate *in personam* where the property sought to be sequestered is outside its jurisdiction HARIVALLABHDAS KALLIANDAS *v* UTAMCHAND MANIKCHAND IN RE GOPALRAV MYRAL [8 Bom, O C, 236

SERVANT

See CASES UNDER LIMITATION ACT, 1877, ART 7 (1859, s 1, cl 2)

See CASES UNDER MASTER AND SERVANT

See CASES UNDER PUBLIC SERVANT

——— Custody of—

See ARMS ACT, 1878 s 19 [I. L. R., 20 Calc, 444
I L R., 16 All, 276

See CONTRACT ACT, s. 178 [I L. R., 4 Calc., 497

——— Domestic—

See ACT XIII OF 1859 [2 B. L. R., A Cr, 32

See WILL—CONSTRUCTION [8 B. L. R., 244
9 B L. R., Ap, 4

——— Liability of—

See BENGAL EXCISE ACT 1878 ss 53, 59 [11 C. L. R., 416
I. L. R, 6 Calc, 207
I L R, 9 Calc, 847
I. L R., 17 Calc, 566

See BOMBAY ABKARI ACT, 1876, s 45 [I L. R, 15 Bom, 45

SERVICE OF PROCESS.

See CASES UNDER PROCESS.

SERVICE OF SUMMONS.

See CASES UNDER SUMMONS

SERVICE TENURE.

See BENGAL CESS ACT, 1871, s 3. [7 C. L. R., 373

See BOMBAY REVENUE JURISDICTION ACT, s 4 I. L. R., 18 Bom., 310

See CASES UNDER GHATWALI TENURE.

SERVICE TENURE—*continued*

See GRANT—CONSTRUCTION OF GRANTS [4 Bom, A. C, 1
I. L. R., 9 Bom, 561
I L R, 15 Bom, 222
L R, 18 I A, 22
I L R., 10 Mad., 1

See HEREDITARY OFFICES ACT [I L R., 19 Bom., 250
I. L R., 20 Bom, 423

See LIMITATION ACT, 1877 ART 130 (1871, ART 130) I. L. R, 1 Bom, 586

See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—SUBJECTS OF ACQUISITION [I. L R, 4 Calc., 67

1. ——— Creation of service tenure—

[illegible] ... such at the decennial settlement The onus of proof that the lands were the private lands of the zamindar, not set apart at the decennial settlement as chowkidari chakran, is on the zamindar MOOKTAKESHEE DEBIA CHOWDHRAIN *v* COLLECTOR OF MOORSHEDABAD 4 W R, 30

2 ——— Performance of services—*Nature of grant*—A grant to a man and his heirs on condition of performing service does not in general mean that the service is to be personally performed by the grantee or his heirs but that the grantee is to be responsible for its performance SHIB LALL SINGH *v* MOORAD KHAN 9 W R, 126

3 ——— Deshmukh, Services of—*Hereditary offices—Bom Act XI of 1842 s 2*—By s 2 of Act XI of 1843 hereditary officers are bound to "render the usual services of their respective offices, as far as the same may be required by

[illegible]

information to the Mamlatdar or mohalkari, and that the deshmukh is bound to perform or get performed so much writing business as is necessary for the above purposes, and no more But if by reason of the sub-division of the talukhs his duties in that respect are increased he is bound either personally to perform such increased duties or to provide a karkun or karkuns to perform them for him RANGOBA NAIK *v* COLLECTOR OF RATNAGIRI [8 Bom., A C., 107

[illegible] Bom, A. C, 303

5. ——— Hereditary Offices Act (Bom. Act XI of 1843)—Right of females to inherit.—Since the passing of Act XI of 1843 a

SERVICE TENURE—*continued.*

female can inherit a majumdari vatan. The Collector can assign the whole proceeds of a vatan to the officiating person who is entitled to retain such proceeds as his remuneration. BAI SURAJ *v.* GOVERNMENT OF BOMBAY. BAPUBHAI KHUSHALDAS *v.* BAI SURAJ . . . 8 Bom., A. C., 83

6. ———— Right to officiate in proportion to shares held in vatan—*Discretion of Collector—Act XI of 1843.*—The plaintiff had two shares, and the defendant one, in a patilki vatan. In an action brought by the plaintiff to establish his right to officiate twice as often as the defendant,—*Held* that the plaintiff was not necessarily entitled to such right, though the fact of his holding two shares in the vatan might be a reason for the Collector to exercise his discretion under Act XI of 1843 (when it was in force) in favour of the plaintiff by assigning to him a longer period of management than to the defendant, in the event of two sharers not agreeing as to the person to officiate. BHAVANI SADASHIV *v.* BHAVANI MANAJI . 12 Bom., 232

7. ———— Power of a vatandar to create a perpetual mutalik—*Exclusion of successors from entire management of vatan—Kararpatra grant, Construction of—Vatan—Sanad, Construction of.*—The creation of a perpetual mutalik, with a certain share of the vatan as vritti on account of mutaliki, is within the powers of a holder of the vatan for the time being, more especially when it is done for good and valuable consideration passing to the vatan. But it is not competent to him to exclude his successors from the entire management of the vatan. In 1825 the ancestor of the plaintiff, who was a desai and the last proprietor of the deshgati vatan of Tegur, granted to the ancestor of the defendants a kararpatra whereby, in consideration of the services the latter was to render to the former in recovering the vatan, the defendants' ancestor was to enjoy one-third of the vatan as vatani mutalik from generation to generation. Subsequently the plaintiff's ancestor granted to the defendants' ancestor a sanad which referred to the kararpatra already executed, and vested the entire management of the vatan in the defendants' ancestor from generation to generation after the said vatan was recovered. After protracted legal proceedings, in which the defendants' ancestor assisted the plaintiff's great-grandfather, the vatan was recovered in 1839. In 1846 the defendants' ancestor actually entered into the management, and continued to manage till 1850, in which year Government put the vatan under attachment. From 1850 to 1864 he remained out of possession in consequence of the attachment. In 1864 Government removed the attachment and restored the vatan to the plaintiff's father. On being asked by the Collector to appoint some one to take possession and management of the vatan, the plaintiff's father wrote a reply on the 15th July 1865 that he had appointed the defendants' father to manage it, and the defendants' father continued to manage it till his death in 1880. On his death, a fresh mookhtearnama was executed to the defendants 1 and 4 by the mother of the plaintiff, who was then a minor. Under that mookhtearnama, the defendants managed the vatan till 1882, in which year the plaintiff, having attained his majority, wished to manage it himself, but was opposed by the defendants. The services in connection with the vatan had ceased in 1864. The plaintiff therefore brought the present suit in 1884 to recover the vatan, with mesne profits. The defendants set up the kararpatra and the sanad by which they contended they had acquired the hereditary right to keep the whole vatan in their possession and management and to take one-third of the income derived from the same. The plaintiff impeached these documents as forgeries, and contended that in any case they were not binding on him, as it was not competent to his ancestor to make a permanent alienation of the vatan or its management beyond his lifetime. The Court of first instance awarded the plaintiff's claim. On appeal by the defendants to the High Court,—*Held,* reversing the decree of the lower Court, that the rights of the defendants under the kararpatra were in force and binding on the plaintiff notwithstanding that the services incidental to the vatan had ceased. That document had been executed not merely to create a permanent office for the services of which a certain share in the vatan was allotted as remuneration, but it proceeded on the special service to be rendered to the family of the grantor by the recovery of the vatan itself. In other words, the performance of the service as mutalik was not the entire consideration or motive for the grant, nor did it expressly provide for the grant ceasing when the services should be no longer required. *Held* also that the sanad purported to exclude the grantor's successors in the vatan entirely from the management of the vatan, and to vest it in the permanent mutalik, and, whilst leaving them as the absolute owners of the two-thirds, to deprive them of all control over it. This was virtually to attach an incident to the vatan inconsistent with its nature which the plaintiff's ancestor was not competent to do. The parties were entitled to the joint management of the vatan as tenants-in common in respect of their undivided shares. BHIMAJI BALVANT *v.* GIRIAPA TIMAPA DESAI . . . . I. L. R., 14 Bom., 82

8. ———— Appointment of deputy—*Power of holder of tenure.*—The holder of an hereditary office, such as a deshpande vatan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. RAVJI RAGHUNATH *v.* MAHADEVRAV VISHVANATH . 2 Bom., 237

9. ———— Death of grantee without heirs—*Custom—Reversion of jaghir to grantor.*—Where the custom of the country was found to be that on the death of a service tenure-holder without heirs his jaghir reverted to the grantor, the right of the grantor to the land on the death of the grantee without heirs was recognized. RAMESSURNATH SINGH *v.* HURO LAL SINGH . . 6 W. R., 87

10. ———— Abandonment of tenure—*Mokuraridar abandoning tenure—Forfeiture of property for rebellion.*—A mokuraridar, having fled

SERVICE TENURE—*continued.*

and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground that the mokurari was not an absolute tenure, but one on condition of service to be rendered to the former proprietor whose estate has been confiscated for rebellion NEPAL SINGH *v* RAM SURUN SINGH [W. R., 1864, 5

11. ———— Alienation by holder—*Crotriyam—Power of holder to alienate* —Each holder of a crotriyam conferred for lives can only alienate his own life-interest SUNDARAMURTI MUDALI *v.* VALLINAYAKKI AMMAL . . . 1 Mad., 465

See VISSAPPA *v* RAMAJOGI. . 2 Mad., 341

12. ———— *Interest of one of co-parceners in service tenure—Nature of interest—Act XI of 1843* —*Held* that the interest enjoyed by one of a body of co-parceners in possession of land attached by way of emolument to an hereditary office cannot be bequeathed to one or more of the other co-parceners, as the estate held by each sharer is only a life interest, subject to the right of the Collector, under Act XI of 1843, to assign a fit remuneration from the rent and profits for the maintenance of the person appointed to conduct the duties of the office. BHIMAPPA *v.* MARIAPPA [3 Bom, A. C, 128

13 ———— *Adverse possession against one holder how far a bar against a succeeding holder—Judgment against one holder how far res judicata against succeeding holder—Alienability of lands when services are abolished—Bom Act II of 1865—Bom Act VII of 1863* —*Held* (1) that, in the absence of fraud and collusion, adverse possession for twelve years during the lifetime of one holder of service vatan lands is a bar to succeeding holders. (2) In the absence of fraud and collusion, judgment against one holder of service vatan lands is *res judicata* as regards a succeeding holder. (3) Such lands become alienable when the services are abolished, except in cases where there is a concurrent family custom operating similarly to keep the vatan estate together. Such a custom may continue and may singly bind the hands of the successive holders of the property after the former restriction has failed or been removed. The abolition of the public duty does not alter the nature of the estate If the family custom forbids alienation beyond the lifetime of the alienor, the custom will operate equally after the patrimony has ceased to be a vatan, as before Where, however, such a concurrent custom does not affect an estate, then when it is freed from its connection with the public office the reason arising from that connection for the preservation of the estate necessarily fails, and the lands ... escent and ... respect to ... ay Acts II ... lly exempt ... e lands, or what were deemed service lands have been alienated, and at a later period the service has been disclaimed or abolished, this subsequent abolition or discharge

renders the title of the alienee in possession undisputable by the alienor's heirs, assuming that there is no special family custom operating apart from the law which preserves service lands for the intended uses The alienation is, of course, subject to the terms on which family property can usually be alienated. RADHABAI *v* ANANTRAV BHAGVANT DESHPANDE . . . I. L. R., 9 Bom., 198

See VASANJI HARIBHAI *v.* LALLU AKHU [I. L. R., 9 Bom., 285

14. ———— *Liability to sale in execution of decree—Police jaghir—Public ser-* ... of a public kind, as in the case of a police jaghir NILMONEE SINGH DEO *v* KASHEE MAHTOON [25 W. R., 206

15. ———— *Vatan — Mortgage of vatan property—Adverse possession —Limitation—Succession to vatan—Entry of vatan in name of trespasser—Effect of Gordon Settlement effected with trespasser—Right of redemption* —*B D* died in 1847, leaving his two widows, *K* and *R* The plaintiff *P* was born to *R* in 1848, *i.e.*, the year after *B D*'s death. *B D*'s vatan had been attached by Government in 1844, but in 1848 or 1849 Government restored a small portion of it, entering it in the name of *K* and refusing to recognize the infant *P*. In 1865 the Government restored the rest of the vatan, again acknowledging *K* as the holder, the agreement with her being under "the Gordon Settlement." In 1865 *K* mortgaged two villages (part of the vatan) to one *S* (father of the defendants), who was the vatani karkun for R9,900, which had been advanced by him to *K*, while the vatan was under sequestration. Possession was given ... Collector cancelled the sale under the Vatan Act (Bombay Act III of 1874). In 1873 *S* obtained a further decree against *K* for the *revenue of two years* (1870—72) and for possession as mortgagee He got possession through the Court in 1875. *K* and *P*, who had been on good terms, quarrelled, and on the 16th March 1872 *K* adopted one *B* as a son to her deceased husband *B D*. In December 1872 *P* sued *K* and *B*, praying that he might be declared the son of *B D*, and that the adoption of *B* might be cancelled. In 1879 the High Court held that *P* was the legitimate son of *B D*, and that *B*'s adoption was invalid The legitimacy of *P* being thus established, the Collector, in 1878, entered the vatan in his name. At that time and until 1880, *P* and *S* were on friendly *terms*, the two having joint possession of the mortgaged villages, *P* being subsequently to October 1878 the recognized occupant, and *S* taking some, if not

SERVICE TENURE—*continued.*

female can inherit a majumdari vatan. The Collector can assign the whole proceeds of a vatan to the officiating person who is entitled to retain such proceeds as his remuneration. BAI SURAJ *v.* GOVERNMENT OF BOMBAY. BAPUBHAI KHUSHALDAS *v.* BAI SURAJ . . . . 8 Bom., A. C., 83

6. ———— **Right to officiate in proportion to shares held in vatan**—*Discretion of Collector—Act XI of 1843.*—The plaintiff had two shares, and the defendant one, in a patilki vatan, In an action brought by the plaintiff to establish his right to officiate twice as often as the defendant,—*Held* that the plaintiff was not necessarily entitled to such right, though the fact of his holding two shares in the vatan might be a reason for the Collector to exercise his discretion under Act XI of 1843 (when it was in force) in favour of the plaintiff by assigning to him a longer period of management than to the defendant, in the event of two sharers not agreeing as to the person to officiate. BHAVANI SADASHIV *v.* BHAVANI MANAJI . 12 Bom., 232

7. ———— **Power of a vatandar to create a perpetual mutalik**—*Exclusion of successors from entire management of vatan—Kararpatra grant, Construction of—Vatan—Sanad, Construction of.*—The creation of a perpetual mutalik, with a certain share of the vatan as vritti on account of mutaliki, is within the powers of a holder of the vatan for the time being, more especially when it is done for good and valuable consideration passing to the vatan. But it is not competent to him to exclude his successors from the entire management of the vatan. In 1825 the ancestor of the plaintiff, who was a desai and the last proprietor of the deshgati vatan of Tegur, granted to the ancestor of the defendants a kararpatra whereby, in consideration of the services the latter was to render to the former in recovering the vatan, the defendants' ancestor was to enjoy one-third of the vatan as vatani mutalik from generation to generation. Subsequently the plaintiff's ancestor granted to the defendants' ancestor a sanad which referred to the kararpatra already executed, and vested the entire management of the vatan in the defendants' ancestor from generation to generation after the said vatan was recovered. After protracted legal proceedings, in which the defendants' ancestor assisted the plaintiff's great-grandfather, the vatan was recovered in 1839. In 1846 the defendants' ancestor actually entered into the management, and continued to manage till 1850, in which year Government put the vatan under attachment. From 1850 to 1864 he remained out of possession in consequence of the attachment. In 1864 Government removed the attachment and restored the vatan to the plaintiff's father. On being asked by the Collector to appoint some one to take possession and management of the vatan, the plaintiff's father wrote a reply on the 15th July 1865 that he had appointed the defendants' father to manage it, and the defendants' father continued to manage it till his death in 1880. On his death, a fresh mookhtearnama was executed to the defendants 1 and 4 by the mother of the plaintiff, who was then a minor. Under that mookhtearnama, the defendants managed the vatan till 1882, in which year the plaintiff, having attained his majority, wished to manage it himself, but was opposed by the defendants. The services in connection with the vatan had ceased in 1864. The plaintiff therefore brought the present suit in 1884 to recover the vatan, with mesne profits. The defendants set up the kararpatra and the sanad by which they contended they had acquired the hereditary right to keep the whole vatan in their possession and management and to take one-third of the income derived from the same. The plaintiff impeached these documents as forgeries, and contended that in any case they were not binding on him, as it was not competent to his ancestor to make a permanent alienation of the vatan or its management beyond his lifetime. The Court of first instance awarded the plaintiff's claim. On appeal by the defendants to the High Court,—*Held*, reversing the decree of the lower Court, that the rights of the defendants under the kararpatra were in force and binding on the plaintiff notwithstanding that the services incidental to the vatan had ceased. That document had been executed not merely to create a permanent office for the services of which a certain share in the vatan was allotted as remuneration, but it proceeded on the special service to be rendered to the family of the grantor by the recovery of the vatan itself. In other words, the performance of the service as mutalik was not the entire consideration or motive for the grant, nor did it expressly provide for the grant ceasing when the services should be no longer required. *Held* also that the sanad purported to exclude the grantor's successors in the vatan entirely from the management of the vatan, and to vest it in the permanent mutalik, and, whilst leaving them as the absolute owners of the two-thirds, to deprive them of all control over it. This was virtually to attach an incident to the vatan inconsistent with its nature which the plaintiff's ancestor was not competent to do. The parties were entitled to the joint management of the vatan as tenants-in common in respect of their undivided shares. BHIMAJI BALVANT *v.* GIRIAPA TIMAPA DESAI . . . . I. L. R., 14 Bom., 82

8. ———— **Appointment of deputy**—*Power of holder of tenure.*—The holder of an hereditary office, such as a deshpande vatan, cannot create an hereditary deputy. The appointment of a deputy made by a particular incumbent cannot extend beyond the life of such incumbent. RAVJI RAGHUNATH *v.* MAHADEVRAV VISHVANATH 2 Bom., 237

9. ———— **Death of grantee without heirs**—*Custom—Reversion of jaghir to grantor.*—Where the custom of the country was found to be that on the death of a service tenure-holder without heirs his jaghir reverted to the grantor, the right of the grantor to the land on the death of the grantee without heirs was recognized. RAMESSURNATH SINGH *v.* HURO LAL SINGH . . 6 W. R., 87

10. ———— **Abandonment of tenure**—*Mokuraridar abandoning tenure—Forfeiture of property for rebellion.*—A mokuraridar, having fled

SERVICE TENURE—*continued*

and abandoned his tenure appertaining to a rebel's estate which was confiscated by Government, was held not entitled to recover the tenure on the ground that the mokurari was not an absolute tenure, but one on condition of service to be rendered to the former proprietor whose estate has been confiscated for rebellion. NEPAL SINGH v RAM SURUN SINGH [W. R., 1864, 5

his own life-interest. SUNDARAMURTI MUDALI v. VALLINAYAKKI AMMAL . . . 1 Mad., 465

See VISSAPPA v RAMAJOGI 2 Mad , 341

12. ———— *Interest of one of*

cannot be bequeathed to one or more of the other co-parceners, as the estate held by each sharer is only a life interest, subject to the right of the Collector, under Act XI of 1843, to assign a fit remuneration from the rent and profits for the maintenance of the person appointed to conduct the duties of the office BHIMAPPA v. MAHAPPA [3 Bom , A. C , 128

13. ———— *Adverse posses-*

adverse possession for twelve years during the lifetime of one holder of service vatan lands is a bar to succeeding holders (2) In the absence of fraud and collusion, judgment against one holder of service vatan lands is *res judicata* as regards a succeeding holder. (3) Such lands become alienable when the services are abolished, except in cases where there is a concurrent family custom operating similarly to keep the vatan estate together. Such a custom may continue and may singly bind the hands of the successive holders of the property after the former restriction has failed or been removed. The abolition of the public duty does not alter the nature of the estate. If the family custom forbids alienation be-

tion of the estate necessarily fails, and the lands become subject to the ordinary law of descent and disposal. *Per* WEST, J.—(1) Lands with respect to which a summary settlement under Bombay Acts II and VII of 1863 has been effected are wholly exempt from official obligation. (2) Where service lands, or what were deemed service lands have been aliened, and at a later period the service has been disclaimed or abolished, this subsequent abolition or discharge

SERVICE TENURE—*continued.*

renders the title of the alienee in possession undisputable by the alienor's heirs, assuming that there is no special family custom operating apart from the law which preserves service lands for the intended uses. The alienation is, of course, subject to the terms on which family property can usually be alienated. RADHABAI v ANANTRAV BHAGVANT DESHPANDE . . . I. L. R , 9 Bom , 198

See VASANJI HARIBHAI v. LALLU AKHU [I. L. R., 9 Bom , 285

decree for arrears of its own rent, provided that the *service due from the holder be of a private kind, and* personal to the plaintiff, but not where the service is of a public kind, as in the case of a police jaghir. NILMONEE SINGH DEO v KASHEE MAHTOON [25 W. R., 206

15. ———— *Vatan — Mortgage of vatan property—Adverse possession — Limitation—Succession to vatan—Entry of vatan in name ... ment effe... tion — B ...*

and *R* 1 ...

the year after *B D's* death. *B D's* vatan had been attached by Government in 1844, but in 1848 or 1849 Government restored a small portion of it, entering it in the name of *K* and refusing to recognize the infant *P*. In 1865 the Government restored the rest of the vatan, again acknowledging *K* as the holder, the agreement with her being under "the Gorden Settlement." In 1865 *K* mortgaged two villages (part of the vatan) to one *S* (father of the defendants), who was the vatani karkun, for R9,000, which had been advanced by him to *K*, while the vatan was under sequestration Possession was given

revenues to *S* He accordingly brought a suit against her for the revenues of 1869-70 and obtained a decree, in execution of which he sold the villages and bought them at the sale In 1878, however, the Collector cancelled the sale under the Vatan Act (Bombay Act III of 1874). In 1873 *S* obtained a further decree against *K* for the revenue of two years

At that time and until 1880, *P* and *S* were on friendly terms, the two having joint possession of the mortgaged villages, *P* being subsequently to October 1878 the recognized occupant, and *S* taking some, if not

SERVICE TENURE—*continued.*

all, of the revenues of the two villages. In 1880 *S* died, and his sons, the defendants, quarrelled with *P*, who in 1881 obtained an order from the Collector directing the village officers to pay the revenues of the two villages to him, and not to the defendants. This order was subsequently set aside, and thereupon *P* in August 1887 filed the present suit to have the mortgage executed by *K* to *S* on the 15th September 1865 declared null and void and to recover possession of the two villages. In the alternative, he prayed for redemption of the mortgage. The defendants pleaded (*inter aliâ*) that the villages were not vatan; that they were entitled to the villages by reason of adverse possession; that the suit was barred by limitation; and that the plaintiff was estopped from disputing the mortgage, etc. *Held* (1) on the evidence that the property in question was part of a desai vatan, and as such was held on service tenure. (2) That the property in question was subject to the rule which was in force in 1865, when the mortgage to *S* was executed, *viz.*, that alienation by way of mortgage of any portion of vatan property had no force beyond the life of the vatandar who mortgages it. (3) That the plaintiff having been declared to be the legitimate son of *B D*, he was from the date of his birth in 1848 the rightful vatandar, and *K*, unless she was manager acting on his behalf, was a trespasser. The fact that Government had entered the vatan in her name, and that the "Gordon Settlement" was effected with her, would not make her vatandar as long as *B D*'s son (the plaintiff) was alive. (4) That if *K* was a mere trespasser, then the plaintiff's right to recover the lands free from incumbrance, on the ground that he was the vatandar, had been lost by limitation, and the property had become *K*'s by adverse possession. The plaintiff, however, as her step-son, was her heir. The mortgage was proved and was binding on him as heir, and as such he had a right to redeem it. SWAMIRAO *v.* PADAPA BIN BHUJANGRAV

[I. L. R., 18 Bom., 22

16. ——————— *Vatan service land, Alienation of—Gordon Settlement in the Southern Maratha Country—Effect of the application of, to service vatan—Alienability of such vatan where services have been dispensed with—Vatandars (Bombay) Act III of 1874—Bom. Reg. XVI of 1827—Bom. Acts II and VII of 1863.*—*R* and his sons were members of an undivided family. In execution of certain money-decrees passed against *R*, the lands in dispute were sold to various persons from whom they were afterwards bought by the defendant. In 1875 *R* died, and in 1887 his sons and grandson filed this suit against the defendant to recover the lands. They alleged that the lands were service vatan lands and inalienable, and that the execution-sales affected nothing except *R*'s life-interest, and that on *R*'s death they (the plaintiffs) became entitled. They also contended that, even if the Court should find that the lands were not service vatan lands, they were at all events ancestral property, and that the plaintiffs' interests therein were not affected by execution-sales under decrees to which they were not parties. *Held*, on the evidence affirming the judgment of the Court below, that, with the exception of two fields, none of the lands in question were service vatan lands. *Held* further that the two fields which were so excepted, and which had been the subject of a "Gordon Settlement" in 1864, remained inalienable vatan lands, although the services in respect of them had been dispensed with. The settlements made under Bombay Acts II and VII of 1863 made the lands thenceforth transferable as the property of the holder. *Radhabai* v. *Anantrav, I. L. R., 9 Bom., p. 215.* What is termed a "Gordon Settlement" was an arrangement, entered into in 1864 by a Committee, of which Mr. Gordon, as Collector, was Chairman, acting on behalf of Government, with the vatandars in the Southern Maratha Country, by which the Government relieved certain vatandars in perpetuity from liability to perform the services attached to their offices in consideration of a judi or quit-rent charged upon the vatan lands. These settlements were given binding legal effect by cls. 2 and 3 of s. 15 of Bombay Act III of 1874. At the time when these settlements were made, lands were alienable by Bombay Regulation XVI of 1827 (as construed by the Courts) beyond the life of the actual incumbent, and the Gordon Settlement of 1864 (unless where it was otherwise specially provided by a particular settlement) was not intended by either party to those settlements to convert the vatan lands into the private property of the vatandar with the necessary incident of alienability, but to leave them attached to the hereditary offices, which, although freed from the performance of services, remained intact, as shown by the definition of hereditary office in the declaratory Act III of 1874. APPAJI BAPUJI *v.* KESHAV SHAMRAV. KESHAV SHAMRAV *v.* APPAJI BAPUJI . . . . I. L. R., 15 Bom., 13

17. ——————— Cessation of services—*Land held on quit-rent—Waiver of performance—Lapse of tenure.*—As an ordinary rule, if land is given on a quit-rent, or no rent at all, in consideration of service to be performed, the tenure would lapse when those services ceased. *Quære*—When no service has been required or performed for a long series of years, and the tenure has been allowed to be held at a quit-rent, or no rent at all, whether there has not been such a waiver of service as puts it out of the power of the grantor to resume the tenure, simply on the ground that he has now no need of the service for which the tenure was originally created? *Quære*—Whether, when land is given at a quit-rent, on condition that the grantee shall aid the grantor in repelling the attacks of his enemies or for any other particular purpose, while the grantee is willing to render those services, the grantor can put an end to the contract by saying that he has no enemies to repel, and therefore no need of the grantee's further services? NILMONEY SINGH DEO *v.* SHEO TEWARY

[W. R., 1884, 324

18. ——————— *Impartible vatan.*—A cessation (even though sanctioned by the Government) of the performance of the duties attached to an impartible vatan does not alter the nature of the estate and make it partible. SAVITRIAVA *v.* ANANDRAV . . 12 Bom., 224

SERVICE TENURE—*continued.*

19 ———— *Impartible vatan—Discontinuance of services.*—Discontinuance of services attached to an impartible vatan does not alter the nature of the estate and make it partible. RAMRAO TRIMBAK *v.* YESHVANTRAO MADHAVRAO [I. L. R., 10 Bom., 327

20. ———— *Commutation of services—Desaigiri allowance—Right to hold as personal gratuity—Amin sukhdi—Suit to establish right to amin sukhdi.*—The parties, who were desais of Mahudha, in addition to their "desaigiri" allowance enjoyed an allowance called "amin sukhdi" In 1847 the plaintiff sued the defendant's father and the Collector of Kaira for a share of the allowance; but as the whole of it had been reserved by the Collector to the defendant's father as the officiating desai, the suit was rejected under Act XI of 1843 In 1866 an arrangement was come to, under which a sum of R40-2 0 was to be annually available over and above

as part of the desaigiri vatan, and a moiety of it having been subsequently freed from the obligation of service, the desai who happened to officiate at the time the allowance was freed from service had no right to hold the moiety exclusively as a personal allowance to himself MANEKLAL AMBATLAL *v.* SHIVLAL BHOGILAL . I. L. R., 8 Bom., 426

21. ———— *Long possession—Liability for rent.*—The mere fact of a long prior possession of a service tenure on no rent at all gives the holder no exemption from the payment of rent when the service is no longer required or performed. CHUNDER NATH ROY *v.* BHEEM SIRDAR [W. R., 1864, Act X, 37

22 ———— *Commutation of services for rent*—Where the original donee of a service tenure ceases to do any service and pays in lieu a rent which his descendants continue to pay, the condition of the tenure becomes altered from service to rent. MAHENDRA SINGH *v.* JOKHA SINGH [19 W. R., P. C, 311

23. ———— Resumption of tenure—*Partition where service lands are all allotted to one co-sharer*—The joint proprietors of a talukh assigned to the defendants a portion of land therein in consideration of chowkidari services rendered by him throughout the area of the talukh. A butwara having been effected, the plaintiff obtained a fourth share within which fell the assigned land. Upon

more than a one fourth share of the ... the services ren... that, as long as the defendant's serv... plaintiff could r... from the defend... him by all the shareholders, when they were joint, as a consideration for those services. BEECHOOK PASBAN *v.* KULAB SINGH . . 20 W. R., 369

24. ———— *Bom Act VII of 1863, s 2—Jurisdiction of Civil Courts—Resumption of service tenures*—Cl 4 of s 2 of Bombay Act VII of 1863 (an Act for the summary settlement of claims to exemption from the payment of Government land revenue) enacted that no suit or action between Government and the holders of any lands held for service in regard to the tenure of such lands should be entertained in any Court of Civil Judicature. *Held* that the phrase "lands held for service" meant lands declared by Government under s. 32 (*d*) of the Act to be so held, though the plaintiff might deny that the lands in respect of which he sues were service lands The laying down of general rules by Government as to the resumption of service lands under art. 3, cl 3 of s 2 of the Act, was not a condition precedent to their protection from suits and actions in respect of such lands PREMSHANKAR RAGHUNATHJI *v.* GOVERNMENT OF BOMBAY [8 Bom., A C, 195

25 ———— *Suit for ejectment—Bengal Tenancy Act (VIII of 1885), ss 89 and 181*—Service tenures are excepted from the operation of s 89 of the Bengal Tenancy Act MOKBUL HOSSAIN *v.* AMEER SHEIKH [I. L R., 25 Calc., 131

into by treaty between the British Government and the Raja of Satara in 1819, and the terms fixed separately with the several Satara jaghirdars in 1820, did not impart any greater fixity of tenure than had previously belonged to the latter under Maratha rule, and their jaghirs remained liable to resumption at the will of the Government. The question to whom a saranjam, or jaghir, shall be granted, upon the death of its holder, is one which belongs exclusively to the Government to be determined upon political considerations, and it is not within the competency of any legal tribunal to review the decision. Inam villages and lands, with the mokasa, included originally in one saranjam granted under the Maratha rule for the support of troops, remained after 1820, when the rule of the Peshwa had ceased, a personal and military jaghir, forming a mixed estate of saranjam and inam. The tenure remained, under British rule, political; and no distinction could be drawn in this respect between the inam lands and the saranjam. The whole estate passed to the persons whom

SERVICE TENURE—*continued.*

the Government at its discretion for political reasons recognized as the grantee, without its being competent to any Court of law to question the decision of the executive authority in the matter. SULTAN SANI *v.* AJMODIN. SULTAN SANI *v.* BEGUMBI

[I. L. R., 17 Bom., 431
L. R., 20 I. A., 50

27. ——————— *Bhoomear tenures.*—Bhoomears are bound to render certain customary services, but their lands are not resumable. GOPALNATH TEWAREE *v.* BHOOYAH ORANOO

[6 W. R., 137

28. ——————— *Power of Government to resume majumdari vatans.*—Government has no power to resume majumdari vatans where it dispenses with the services in respect of them, if the holders of such vatans are ready and willing to perform such services. GOVERNMENT OF BOMBAY *v.* DAMODHAR PARMANANDAS . 5 Bom., A. C., 202

29. ——————— *Services dispensed with—Right of zamindar to resume.*—A zamindar has *primâ facie* a right to resume lands of the zamindari granted subject to a quit-rent to tenants upon condition of their rendering personal services when such services are dispensed with. SANNIYASI RAZU *v.* ZAMINDAR OF SALUR. PAKIR RAZU *v.* ZAMINDAR OF SALUR . I. L. R., 7 Mad., 268

30. ——————— *Suit for enhancement of rent—Right to resume when services not required—Evidence.*—*R* sued *S* to recover instalments of kist due on the ground that *S* held a village on service tenure (granted on condition of paying kist and performing service); that the services of *S* were not at present required, as the Court of Wards had assumed the management of the estate of *R*; that the assessment had accordingly been increased; and that defendant had declined to accept a lease at an enhanced rate and to execute a counterpart. *S* denied that he held on service tenure, and set up a gift from one of the ancestors of *R*. *Held* that, as *S* failed to prove the alleged gift and had not traversed *R*'s allegation that he was entitled to resume the grant when the services were not required, and as it was proved that the kist had been enhanced on one occasion without objection from *S*, there was evidence to warrant the conclusion that the village was neither inam nor granted in perpetuity burdened with a certain service, and that *R* was entitled to the enhanced rate claimed. SITARAMARAZU *v.* JAGANADA NARAYANA . . I. L. R., 3 Mad., 367

31. ——————— *Landlord and tenant—Service tenure with rent—Enhancement of rent—Resumption—Onus probandi.*—In a suit brought in 1856 by a zamindar to recover an estate granted by his predecessor to the predecessor of the defendant on a service tenure, a small money-rent being also reserved, it appeared that in 1864 the right of the plaintiff's predecessor to rent had been established by suit, but there was no evidence that the service was then dispensed with, but in 1885 it was intimated to the defendant that the service was dispensed with, and a notice to quit was given to him; the option of holding the estate at an enhanced rent was, however, given to him at the same time. *Held* that the plaintiff was not precluded by any implied contract from increasing the rent; and that the burden of proving the plea that the plaintiff was not entitled to eject lay on the defendants, and had not been discharged. MAHADEVI *v.* VIKRAMA

[I. L. R., 14 Mad., 365

32. ——————— *Grant of service tenure rent-free—Assessment of rent by settlement officer when service no longer required—Bom. Act VI of 1862.*—The talukhdari settlement officer having assessed rent-free land, on the ground that it had been granted for service, and that service was no longer required,—*Held* that this was not a sufficient defence to an action by the holder of the land, it not being shown that by the terms of the grant (assuming that there had been a grant of an estate burdened with service) the estate was determined by the remission of the service. KEVAL KUBER *v.* TALUKDARI SETTLEMENT OFFICER . I. L. R., 1 Bom., 586

33. ——————— *Lands held on amaram tenure resumable at will on reasonable notice—What amounts to reasonable notice considered.*—A village and its hamlets had been given by a plaintiff's ancestors to the ancestors of the defendants on amaram service. Plaintiff now required the defendants to hand over the land, and had served two notices on them to that effect. The first of such notices had been served less than three months before the end of a fasli; in the second, suit was threatened in default of reply within ten days. *Held* that lands held on amaram tenure are resumable, and that the defendants had no permanent right of tenure. *Held* further that, before such resumption of lands can take place, reasonable notice must be given; and that the notices which had been served were insufficient. NARASAYYA *v.* VENKATAGIRI RAJAH I. L. R., 23 Mad., 262

See UNIDE RAJAHA RAJE BOOMARANGE BAHADUR *v.* PEMMUASAMY VENKATADRY NAIDOO

[7 Moore's I. A., 128

34. ——————— *Jagir granted to gorait or village watchman—Resumption by zamindar—Liability to ejectment—Notice to quit.*—A service tenure created for the performances of services, private or personal, to the zamindar may be resumed by the zamindar when the services are no longer required, or when the grantee of the tenure refuses to perform the services. The distinction between a grant of an estate burdened with a certain service and an office the performance of the duties of which is remunerated by the use of certain lands pointed out. *Sannayasi* v. *Salur Zamindar, I. L. R., 7 Mad., 268; Hurrogobind Raha* v. *Ramrutno Dey, I. L. R., 4 Calc., 67; Sreesh Chunder Rao* v. *Madhub Mochee, S. D. A. (1857), p. 1772; Nilmony Sing Deo* v. *Government, 18 W. R., 321; Unide Rajaha Raje Baumaranze Bahadur* v. *Pemmasamy Venkatadry Naidoo, 7 Moore's I. A. 128; Forbes* v. *Meer Mahomed Tuker, 13 Moore's I. A., 438; Lilanand Singh* v. *Munorunjun Singh, 13 B. L. R., 124; L. R., I. A., Sup. Vol., 181; and Mahadevi* v. *Vikrama, I. L. R., 14 Mad., 365,* referred to. In a suit for resumption of jagir lands

rvices to the zamindar ... Held that the ... the terms of the grant ...

... UDHU DASHAD . . I. L. R., 22 Calc., 855

35 ——————— *Resumption of service grant*—The plaintiff sued for possession of three villages granted by his predecessor to the ancestors of the defendants on the ground that the villages had been granted on service tenure, and that he was entitled to resume them. *Held*, on the evidence, that the plaintiff was not entitled to resume the villages. VIZIANAGRAM MAHARAJAH *v.* SITARAMARAZU . . I. L. R., 19 Mad., 100

36 ——————— *Resumption of* ...

... resumed when the service is no longer required, except when there has been a grant of an hereditary office to *those who are to perform the service.* In that case, the land can only be resumed when the need of such service altogether ceases. Where the services are still required, and the grantee has a right to the hereditary office, he cannot be deprived of the land on the mere ground that the grantee prefers to appoint some one else to officiate. The ancestors of the plaintiff appointed the ancestors of the defendants as hereditary kulkarnis, and granted to them certain lands as remuneration for service as kulkarni and as karkun. The service required as karkun ceased in 1863-64. Members of defendants' family officiated as kulkarnis for more than two hundred years. They continued to officiate till 1887. Their *services were then dispensed with, and a stranger was* appointed kulkarni by the plaintiff. In 1894 the plaintiff sued to recover all the lands. *Held* (1) that *the appointment of the defendants' family as* hereditary kulkarni was valid. (2) That the claim to recover possession of part of the lands assigned for the remuneration of the defendants as karkun was time-barred by the defendants' adverse possession ...

... were refused, provided they duly discharged the duties of the office should their services be required. BHIMAPAIYA *v.* RAMCHANDRA BHIMRAO [I. L. R., 22 Bom., 422

SERVICE TENURE—*continued.*

... have been performed does not of itself make the holding adverse. To make the holding adverse, there must be a refusal to perform service or a claim to hold the lands free of service. KOMARGOWDA *v.* BHIMAJI KESHAV . . I. L. R., 23 Bom., 602

38. ——————— *Non performance of service—Payment of assessment by mortgagee—Change of title—Redemption*—Plaintiff was the ...

... as no service was rendered, Government appointed another person to perform the service and demanded ...

... to redeem the lands. *Held* that, in the absence of a declaration of forfeiture of the holding, the steps which Government took to recover the assessment in lieu of service had not the effect of creating any *change of title, and that the plaintiff was therefore* entitled to redeem. BHIMA *v.* RAGHAVENDRACHARYA . . . I. L. R., 24 Bom., 482

39 ——————— *Chakeran lands*— ...

... talukhdar (appellant) contended that the lands were gram suranjami lands not liable to the performance of any but personal services to him and not legally appropriated for the performance of these services, ...

... *liable to the performance of such services to the* talukhdar as, by usage in the zamindari, chowkidars were accustomed to render to the zamindar. JOYKISHEN MOOKERJEE *v.* COLLECTOR OF EAST BURDWAN 1 W. R., P. C., 26: 10 Moore's I. A., 16

40. ——————— *Resumption of jagir—Proof of personal services—Grant of sanad to jagirdar*—Where a sanad granted to the holder of a jagir was only a confirmation by the Government and the Rajah of the tenure under which the jagir was held, and authorized the jagirdar to remain in possession and in the performance of the services with his brothers, without describing *the kind of service,*—*Held* by the Privy Council that the Rajah could not resume the land without proof that the

SERVICE TENURE—*concluded.*

services to be performed by the jagirdar were personal services only to the Rajah. NILMONEY SINGH DEO *v.* GOVERNMENT . . . 18 W. R., 321

S. C. in High Court . . . 6 W. R., 121

41. ———— Forfeiture of tenure—*Alienation without grantor's consent.*—In a suit to obtain khas possession of lands which were found to have been held of plaintiff and his ancestors by defendants and their ancestors upon a service tenure, but which the grantees alienated to strangers, without any acquiescence on the part of the granter, and then ceased to perform the services, it was held that the defendants had forfeited their right to hold the land at all. RAMGOPAL CHUCKERBUTTY *v.* CHUNDERNATH SEIN . . . . 10 W. R., 289

42. ———— *Refusal to perform services—Ejectment.*—A distinct refusal by a tenant to perform services incidental to his holding renders him liable to ejectment. HURROGOBIND RAHA *v.* RAMRUTNO DEY . I. L. R., 4 Calc., 67

43. ———— *Tenure resumable at will to grantor—Notice to surrender.*—Where land held on service tenure is resumable at the will of the grantor, the holder cannot be ejected before a reasonable notice to surrender the land has been given. LAKSHMI *v.* CHENDRI . I. L. R., 8 Mad., 72

SERVICE UNDER EAST INDIA COMPANY.

See DOMICILE . I. L. R., 4 Calc., 108

SESSIONS CASE.

See CRIMINAL PROCEDURE CODES, ss. 436, 438 . . I. L. R., 1 All., 413
[I. L. R., 4 Calc., 16
7 C. L. R., 168
I. L. R., 2 All., 570
21 W. R., 41

See CRIMINAL PROCEDURE CODES, s. 487.
[11 Bom., 98
12 Bom., 1

SESSIONS JUDGE.

———— Case heard by—

See CRIMINAL PROCEEDINGS.
[I. L. R., 6 Calc., 96
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I. L. R., 22 Mad., 15
I. L. R., 17 All., 36

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . 7 N. W., 211
[20 W. R., Cr., 50
I. L. R., 2 All., 771
14 W. R., Cr., 25
6 C. L. R., 245
I. L. R., 8 Calc., 875
I. L. R., 9 All., 362
I. L. R., 10 All., 146
I. L. R., 23 Bom., 696
I. L. R., 27 Calc., 295
4 C. W. N., 683
I. L. R., 23 Calc., 249, 250

SESSIONS JUDGE—*concluded.*

See CASES UNDER VERDICT OF JURY—GENERAL CASES.

See CASES UNDER VERDICT OF JURY—POWER TO INTERFERE WITH VERDICTS.

———— Commitment to—

See CASES UNDER COMMITMENT.

See CRIMINAL PROCEEDINGS.
[I. L. R., 3 All., 258
B. L. R., Sup. Vol., 750
I. L. R., 8 Bom., 312
I. L. R., 16 Bom., 200
I. L. R., 17 Mad., 402

See CASES UNDER MAGISTRATE, JURISDICTION OF—COMMITMENT TO SESSIONS COURT.

———— Duty of—

See PLEADER—APPOINTMENT AND APPEARANCE . . I. L. R., 23 Calc., 493

See REFERENCE TO HIGH COURT—CRIMINAL CASES . . 10 W. R., Cr., 50
[I. L. R., 13 Mad., 343
I. L. R., 25 Calc., 555
4 C. W. N., 683

See VERDICT OF JURY—GENERAL CASES.
[I. L. R., 19 Bom., 735

———— Obligation to form independent opinion on case—*Opinion of committing Magistrate, Reference to, by Sessions Judge in his judgment.*—On a case the decision of which is vested by law in him sitting with assessors, a Sessions Judge is bound to form his own opinion, aided by the assessors indeed, but quite independent of any expression of opinion on the part of the committing Magistrate. The Judge's reference in his judgment to the opinion of the committing Magistrate was held to be wholly irrelevant and wrong. DEWAN SING *v.* QUEEN-EMPRESS . . . I. L. R., 22 Calc., 805

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See BAIL . . I. L. R., 1 All., 151
[1 B. L. R., A. Cr., 7
24 W. R., Cr., 7, 8

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE . 25 W. R., Cr., 8
[7 C. L. R., 143
I. L. R., 8 All., 665
I. L. R., 12 All., 551

See COMMITMENT . 2 W. R., Cr., 44
[I. L. R., 13 Calc., 121
I. L. R., 10 Bom., 319
I. L. R., 8 All., 14
I. L. R., 15 All., 205
I. L. R., 23 Calc., 350

See CASES UNDER CRIMINAL PROCEDURE CODES, ss. 436, 438.

SESSIONS JUDGE, JURISDICTION OF —*continued.*

See CRIMINAL PROCEDURE CODES s. 437
[I. L. R., 12 Calc., 522
I. L. R., 9 All, 52
I. L. R., 12 All., 434
I. L. R., 14 Mad., 334
I. L. R., 22 Calc., 573
I. L. R., 27 Calc., 658

See CRIMINAL PROCEDURE CODES, s. 487
[I. L. R., 14 All., 354

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[I. L. R., 17 All., 36

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See OFFENCE RELATING TO DOCUMENTS
[I. L. R., 12 Mad., 54

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[4 C. W. N., 225

See REGISTRATION ACT 1877 s 83 (1866, s. 95) 6 B. L. R., 692, 693 note

See SANCTION FOR PROSECUTION—POWER TO GRANT SANCTION
[8 Bom., Cr., 126
I. L. R., 2 Bom., 384
I. L. R., 3 All., 205
I. L. R., 10 All., 582

See SECURITY FOR GOOD BEHAVIOUR
[24 W. R., Cr., 10
I. L. R., 20 Calc., 155

1. ——— Offence under Bom. Reg XVII of 1827, s 16—*Criminal Procedure Code 1869.*—An offence under s 16, Regulation XVII of [illegible] appellate jurisdiction vested in the Court of Session by s. 409 of the Code. REG. v. SADU DADABHAI [9 Bom., 166

REG v. AJAM DULLA . . 8 Bom., Cr., 115

2. ——— Offence under Opium Regu- [illegible]

3. ——— Offence under s 23, Railway Act (XVIII of 1851)—*Order for fresh trial.*—A railway watchman was charged before a Head Assistant Magistrate with an offence under s. 26 of Act XVIII of 1854. That charge was dismissed, but the Sessions Judge ordered a fresh trial *Held* that in so doing the Sessions Judge acted without jurisdiction. ANONYMOUS . . . . . 6 Mad., Ap., 41

4. ——— Offence under Registration Act (XX of 1866), s. 95—*Abetment of false personation of witness before Registrar.*—The Sessions Judge had jurisdiction to try a case of abetting false personation of a witness before a Registrar of Assurances under s 95 of the Registration Act (XX of 1866) QUEEN v SHEOGOLAM DAS
[6 B L R., F. B., 692: 15 W. R., Cr., 58

5. ——— Order of Magistrate attach- [illegible] s 319 of the Code of Criminal Procedure, 1861 HURRONATH CHOWDHRY v RAJENDER CHUNDER ROY . . 15 W. R., Cr., 1

6 ——— *Criminal Procedure Code, 1861, s 319—Appeal from Magistrate*—*Held* that the Sessions Judge had no jurisdiction *to hear an appeal from the order of a Magistrate,* under s. 319, Ch XXII of the Criminal Procedure Code, 1861, and that the object of the chapter was to prevent breaches of the peace likely to be occasioned and not the adjudication of title IN THE MATTER OF THE PETITION OF DUTT RAM MISR
[1 Agra, Cr., 29

7. ——— Appeals from sentences of Justice of the Peace acting under Act I of 1859.—The Sessions Court has jurisdiction to hear appeals from the sentences of a Justice of the Peace acting under the Merchant Seamen's Act (I of 1859) IN THE MATTER OF THE PETITION OF EVANS
[2 Mad., 473

8 ——— Offence under Penal Code, s 409, and under s 29, Act V of 1861—*Power of Sessions Judge after acquittal on former charge*—Where an accused was charged before the Sessions Judge under both s 409 Penal Code and under the special law, s 29, Act V of 1861, and was acquitted under the former section it was held that the Sessions Judge could not convict under the latter law, as the Magistrate alone had jurisdiction to convict under that law QUEEN v BHOOBUN SINGH BHOOBUN SINGH v QUEEN
[9 W. R., Cr., 36

9. ——— Power of Sessions Judge to add charge and try it—*Addition of charge triable by any Magistrate—Criminal Procedure Code, 1882, s. 28*—Subject to the other provisions of [illegible] it contains as to the other Courts does not cut down or limit the jurisdiction of the High Court or the Court of Session Three persons were jointly committed for trial before the Court of Session, two of them being charged with culpable homicide not amounting to murder of *J* and the third with abetment of the offence. At the trial the Sessions Judge added a charge against all the accused of causing hurt to *C*, and convicted them upon both the original charges and the added charge. The assault upon *C* took place either at the same time as or immediately after the attack which resulted in the death of *J*. *Held* that the Sessions Judge had power, under s. 28 of the Code to try the charge,

SESSIONS JUDGE, JURISDICTION OF —*continued.*

assuming that he had power to add it. QUEEN-EMPRESS *v.* KHARGA . I. L. R., 8 All., 665

10. ———— *Criminal Procedure Code, 1872, s. 231—Conviction on fresh charge in support of which there was no evidence before Magistrate.*—*R*, having been committed by a Magistrate for trial by a Sessions Court on a charge, under s. 202 of the Penal Code, of having intentionally omitted to give information which he was legally bound to give respecting a murder, pleaded guilty, on his trial, to the charge on which he was committed. Upon the application of the Public Prosecutor, the Sessions Judge, under protest on the part of the prisoner, added a charge under ss. 109 and 201 of the Penal Code of abetting *C*, a female co-prisoner charged with having assisted in burying the body of the murdered person, required *R* to plead to the charge, and, having tendered a pardon to and examined *C* as a witness, convicted and sentenced *R* to two years' rigorous imprisonment. *Held* that, as there was no evidence before the Magistrate to support the charge against *R* framed by the Sessions Judge, the action of the Judge was *ultra vires* and the conviction on the added charge illegal. *Held* also that, inasmuch as the Sessions Judge considered *R* more culpable than *C*, the proper course would have been to have adjourned the trial, sent the record to the Magistrate, and suggested an enquiry as to whether there was ground for a more serious charge against *R*. *Semble*—The object of restricting a Sessions Court from taking cognizance of any offence (except as provided in ss. 455, 472, 474 of the Criminal Procedure Code), unless the accused person has been committed by a Magistrate, is to secure to the prisoner a preliminary enquiry which affords him an opportunity of becoming acquainted with the circumstances of the offence imputed to him and enable him to make his defence MUTIRAKAL KOVILAGATHA RAMA VARMA RAJA *v.* QUEEN . . . I. L. R., 3 Mad., 351

11. ———— **Trial without committal by Magistrate**—*Witness sent up with conditional pardon—Criminal Procedure Code, 1861, ss. 359, 439.*—*Held* that a Sessions Judge acted irregularly in at once trying and convicting a person who had been granted a conditional pardon by the Magistrate, and who had been sent up to the Sessions Court as a witness for the Crown. Such a course was held to be a material irregularity under s. 439 of the Code, and the Sessions Judge was directed to order the Magistrate to commit the accused to the Sessions for a fresh trial after hearing his defence and examining his witnesses. QUEEN *v.* BIPRO DASS [19 W. R., Cr., 43

12. ———— **Order for re trial on appeal**—*Criminal Procedure Code, 1872, s. 280, amended by s. 28, Act XI of 1874.*—It is competent to a Court of Session under s. 280 of the Criminal Procedure Code as amended by s 23, Act XI of 1874, to order a re-trial of a case which is before it on appeal. IN THE MATTER OF SHER MAHOMED 2 C. L. R., 511

SESSIONS JUDGE, JURISDICTION OF —*continued.*

13. ———— **Power to give judgment on evidence partly recorded by predecessor**—*Criminal Procedure Code, 1872, s. 328.*—The power given by the Criminal Procedure Code to a Magistrate to pronounce a judgment upon evidence partly recorded by his predecessor and partly by himself does not extend to a Sessions Judge. TARADA BALADU *v.* QUEEN . . I. L. R., 3 Mad., 112

QUEEN *v.* RUGOONATH DASS . [23 W. R., Cr., 59

14. ———— **Power in regular appeal**—*Insufficient evidence—Acquittal.*—If the evidence which comes before a Sessions Judge in a regular appeal from a Magistrate's order is not sufficient to reasonably satisfy him that the prisoners have been rightly convicted, he ought to acquit them. IN THE MATTER OF THE PETITION OF KHERAJ MULLAH. KHERAJ MULLAH *v.* JANAB MULLAH [11 B. L. R., 33: 20 W. R., Cr., 13

15. ———— **Power to suspend sentence.**—A Sessions Judge has no authority to suspend his own sentence. ANONYMOUS . 4 Mad., Ap., 2

16. ———— A Sessions Judge has no power to suspend a sentence in any case unless there is an appeal. ANONYMOUS [5 Mad, Ap., 1

He should state distinctly whether he agrees with the verdict of the jury or not. QUEEN *v.* CHAND BAGDEE . . . . 7 W. R., Cr., 6

17. ———— **Power to prevent prisoner from appealing**—*Right to appeal.*—It is not the the province of the Sessions Judge to decide whether a prisoner has a right of appeal or not; he is bound to allow a prisoner, whose conviction he has confirmed, to execute a vakalatnama to appeal. QUEEN *v.* VAIYAPURI GAUNDAN . . 1 Mad., 4

18. ———— **Mitigation of sentence without appeal.**—*Held* that a Sessions Judge has no power to mitigate a sentence passed upon a prisoner who has not appealed to him. REG. *v.* MULIYA NANA . . . . 5 Bom., Cr., 24

19. ———— **Power to sentence on appeal from decision of Magistrate**—*Commutation of sentence.*—A Sessions Judge cannot, on appeal from a Magistrate's decision, inflict a term of imprisonment in commutation of a fine longer than that which the Magistrate himself could have inflicted. REG. *v.* HARI BIN VITHOJI 1 Bom., 139

20. ———— **Alteration of sentence in appeal** — *Enhancement of sentence — Appellate Court's power to alter a sentence of fine into one of imprisonment—Criminal Procedure Code (1882), s. 423.*—A Sessions Judge has no power to enhance a sentence in appeal by altering a sentence of fine into one of imprisonment. QUEEN-EMPRESS *v.* DANSANG DADA . . I. L. R., 18 Bom., 751

QUEEN-EMPRESS *v.* LACHMI KANT [I. L. R., 18 All., 301

SESSIONS JUDGE, JURISDICTION OF
—*continued.*

21. ——— Power to pass sentence of death—*Affray with murder—Offence before Penal Code came into operation* —In a case of affray attended with murder, in which the offence was committed before the Penal Code came into force, it was held that a Sessions Judge had himself power, under s. 4, Act XVII of 1862, to pass sentence of death, instead of referring the matter for confirmation of the High Court. QUEEN v. BUSTI SINGH . . 14 W. R., Cr., 76

22. — Amendment of sentence—*Alteration of conviction—Criminal Procedure Code, 1861, s. 22*—*Held* that an order of a Sessions Judge, by which he altered a conviction by the Assistant Sessions Judge of "dacoity" to one of "robbery," was illegal, not being an amendment of a sentence or order within the meaning of s. 22 of the Criminal Procedure Code. *Held* further that, if the accused were, in the opinion of the Sessions Judge, improperly convicted of "dacoity," he ought to have declined to confirm the sentence and to have left them to be charged with and tried for "robbery." REG v. THOMESIT . . 5 Bom., Cr., 22

23. ——— Concurrent jurisdiction

district, under s. 434 of the Code of Criminal Procedure. His proper course, if he thinks that an illegal sentence or order has been passed by a full-power Magistrate, is to make a report to the High Court, which will then, if it thinks fit, call for the proceedings. REG. v. SHIVASAPA

[7 Bom., Cr., 73

ceedings in a case before a full power Magistrate. REG v. KESHAVSHET . . 6 Bom., Cr., 71

25. ——— Power to refer to High Court—*Unnecessary reference to High Court.*—

[11 W. R., Cr., 21

26. ——— Power to call for report from Magistrate—*Power to call for record and proceedings*—A Sessions Judge ought not to call for a report from the Magistrate of the district in any case in which it is not competent to such Sessions Judge to call for the record and proceedings, e.g., in the case of a person tried by a Subordinate Magistrate who has appealed to the District Magistrate. In trials by the Magistrate of the district, or full-power Magistrate, in which the Sessions Judge can call for the record and proceedings, he has power also to call for a report. REG v. GIRDHAR DHARAMDAS

[6 Bom., Cr., 33

27. ——— Power to call for and exa-

by a Subordinate Magistrate where no sentence or order had been passed thereon by the immediately subordinate Court of the Magistrate. REG v. BHASKAR KHARKAR . . 3 Bom., Cr., 1

28. ——— Trial in case committed by Magistrate—*Objection that case was tried without complaint*—A Court of Session cannot treat as a

[4 Bom., Cr., 35

29. ——— *Objection to irregularity of proceedings*—The fact of a commit

[13 W. R., Cr., 17

30. ——— Power to quash sentence of Assistant Sessions Judge—*Sentence submitted*

Judge had
Assistant
ation, and
supposing
the sentence of the Assistant Sessions Judge to be illegal. REG v. MUBAR TRIKAM

[5 Bom., Cr., 3

Judge is of opinion that the order of commitment should be annulled as illegal, he should move the High Court to annul the same under s. 4 of the Criminal Procedure Code. QUEEN v. MATA DEAL

[4 N. W., 6

32. ——— Power to annul conviction and sentence—*Offence beyond jurisdiction of subordinate Court*—It is only when a Court subordinate to a Court of Session convicts a person of

SESSIONS JUDGE, JURISDICTION OF —*continued.*

should refer the case to the High Court. QUEEN v. ICHABUR DOBEY . . 4 W. R., Cr., 11

33. ——— **Power to quash proceedings of Magistrate.**—The order of a Sessions Judge to quash proceedings held before a full-power Magistrate annulled as having been made without jurisdiction. REG. v. GOVINDA BIN BABAJI [5 Bom., Cr., 15

REG. v. GOPAL LAKSHUMAN . 5 Bom., Cr., 25

34. ——— **Power to quash illegal conviction**—*Giving false evidence in judicial proceeding.*—The offence of giving false evidence in a stage of a judicial proceeding is not cognizable by an Assistant Magistrate. A Sessions Judge on appeal can quash an illegal conviction by an Assistant Magistrate in such a case. QUEEN v. HEERAMUN SINGH . . . . . 8 W. R., Cr., 30

35. ——— **Power to annul conviction and order commitment**—*Offences triable by Magistrate—Criminal Procedure Code (Act VIII of 1869), s. 435.*—The Sessions Judge had no jurisdiction to annul a conviction and order a commitment for an offence triable by a Magistrate. S. 435, Act VIII of 1869, related to offences triable by the Sessions Judge. IN THE CASE OF WAZIR SINGH [3 B. L. R., A. Cr., 65: 12 W. R., Cr., 46

QUEEN v. JEETUN KHAN . 11 W. R., Cr., 45

36. ——— *Illegal conviction by Magistrate—Criminal Procedure Code, 1861, s. 435.*—Where the Sessions Judge was of opinion that a Subordinate Magistrate had convicted the defendant of an offence which the Subordinate Magistrate had no power to try, the Sessions Judge might, under s. 435 of the Code of Criminal Procedure, 1861, annul the conviction and direct the committal of the accused for trial. ANONYMOUS [5 Mad., Ap., 32

37. ——— **Order to cancel proceedings of Divisional Magistrate**—*Proceedings reviewing the calendars of Subordinate Magistrate.*—A Sessions Judge has no power to direct a Divisional Magistrate to cancel his proceedings reviewing the calendars of Magistrates subordinate to him. ANONYMOUS . . . . 7 Mad., Ap., 27

38. ——— **Power to direct Magistrate to commit to Sessions**—*Conviction by Magistrate without jurisdiction.*—Where a Magistrate has convicted and sentenced a prisoner of an offence which such Magistrate was competent to try, and the Sessions Judge considered the case so grievous that it should not have been disposed of summarily,—*Held* that such Sessions Judge was not competent to direct the Magistrate to commit the prisoner to the Sessions Court for trial upon the same charge. QUEEN v. HIDDUN KHAN [2 N. W., 285

39. ——— **Power to reverse order of Magistrate as to stolen property.**—A Deputy Magistrate restored to an accused money found in his house along with stolen property, the prosecutor having failed to prove that the money was his. The Sessions Judge on appeal reversed that order, and directed the money to be made over to the prosecutor. *Held* that the order of the Sessions Judge was made without jurisdiction. QUEEN v. SHIB CHUNDER RAI . . . . 9 W. R., Cr., 57

40. ——— **Conviction on confession before Magistrate after plea of not guilty.**—A Sessions Judge, after a prisoner upon his trial has pleaded what in effect amounts to a plea of not guilty, is not justified in convicting the prisoner solely upon a confession made before the committing Magistrate. QUEEN v. HURSOOKH 2 N. W., 479

41. ——— **Power to interfere with order of acquittal**—*Acquittal by Magistrate—Criminal Procedure Code, 1861, s. 435.*—After an accused person had been acquitted under s. 255 of the Code of Criminal Procedure, it was not competent to the Sessions Judge to interfere under s. 435 of the same Act. REG. v. VENKU NARSA . 9 Bom., 170

42. ——— **Power to order commitment**—*Cases exclusively triable by Court of Session.*—The Court of Session can only order the commitment of an accused person in cases exclusively triable by it. QUEEN v. SEETUL PERSHAD [5 N. W., 168

43. ——— *Power to commit to itself cases not triable exclusively by Court of Session—Criminal Procedure Code (Act X of 1872), ss. 231, 471, and 472.*—A Court of Session had no power to commit to itself for trial a case not triable exclusively by such Sessions Court. The words "commit the case itself" in s. 471 of the Code of Criminal Procedure cannot (when read in connection with s. 231) be held to empower a Sessions Court to commit such a case to itself. IN THE MATTER OF EMPRESS v. FUTTEH JYA KHAN [I. L. R., 4 Calc., 570

S. C. IN RE FATA IYAH KHAN . 3 C. L. R., 599

44. ——— *Criminal Procedure Code, 1861, s. 435.*—Where a Judge, under s. 435 of the Criminal Procedure Code, had directed the Magistrate to commit certain accused persons, as also to take their defence,—*Held* that, as the Magistrate could not require the accused to produce evidence nor to make a defence, the Judge should not have included such instructions in his order of commitment, but that the order was not therefore invalid. QUEEN v. GHASEE . . . 4 N. W., 50

45. ——— *False evidence.*—The Sessions Judge has no power to commit a man for having given false evidence before the Magistrate, but he can commit him for having given false evidence in his own Court. QUEEN v. HARDYAL [3 B. L. R., A. Cr., 35

46. ——— *Criminal Procedure Code, 1872, s. 472.*—*L* made a complaint against *S* by petition, in which he only charged *S* with having committed offences punishable under ss. 193 and 218 of the Penal Code, but in which he also accused *S* of acts which, if the accusation had been true, would have amounted to an offence

punishable under s. 466 of that Code with seven years' imprisonment The Magistrate inquired into the charges against *S* under ss 193 and 218 of the Penal Code, and directed his discharge *L* then applied to the Court of Session to direct *S* to be committed for trial on the ground that he had been improperly discharged, which the Court of Session ... trial charged under

commitment was not bad by reason that an offence under s. 193 of the Penal Code is not exclusively triable by a Court of Session *Held* also *per* SPANKIE, *J*, that the Court of Session was competent, notwithstanding that *L* had only charged *S* with offences under ss 193 and 218 of the Penal Code, to charge *L* with offences under ss 195 and 211, if such offences had come under its cognizance EMPRESS v LACHMAN SINGH I. L R., 2 All., 388

47 ——— *Criminal Procedure Code 1861, s 435 and s 359* —A Sessions

person by the Magistrate, s. 359 notwithstanding (*dissentiente* KEMP, *J*) QUEEN v BHOHISAN MAHATCON W R., 1864, Cr., 3

48. ——— *Person discharged by Magistrate* —A Sessions Judge has discretion to ...
Session of ...
Magistrate ...
not be interfered ... 2 W. R., Cr., 44
... SHEETARAM CHOWDHRY

49 ——— *Discharge of accused on inquiry before Magistrate—Further inquiry.*—When an inquiry has been made and the accused discharged the Sessions Court may order the commitment of the accused, but cannot merely direct further inquiry QUEEN v. GHASSEERAM [3 N. W., 90

50. ——— "*Acquittal and release*" *of accused by Magistrate—Criminal Procedure Code, 1861 s 435*—Where a Magistrate used the words "acquittal and release," when he intended only to discharge a person accused of an offence not triable by him —*Held* that the Court of Session was competent, under s. 435, Code of Criminal Procedure to order a commitment of such accused person QUEEN v NEFTIE DULAL [8 W R., Cr., 41

51. ——— *Discharge by Magistrate—Criminal Procedure Code, 1861, s 435* —A Sessions Judge might, under s. 435 of the Code of Criminal Procedure, after a Magistrate has discharged an accused person, order the Magistrate to commit the accused person to the Sessions. IN THE MATTER OF THE PETITION OF MUSMUD ALI CHOWDHRY *alias* MOONHEE MEAN 7 W. R., Cr., 38

52 ——— *Conviction under*

... being offences triable by the subordinate Court. QUEEN v RAMSOHUL SINGH 5 W. R., Cr., 12

53 ——— Power of Joint Sessions Judge—*Criminal Procedure Code (Act X of 1872,*

the application of the complainant ordered their committal to the Sessions Court, the High Court set ... ge, ... a ... or ... In

[I. L R., 9 Bom., 164

54 ——— *Applications under Criminal Procedure Code, 1882 Ch XXXII*

Judge being strictly precluded from exercising any of the powers under Ch XXXII of the Criminal Procedure Code and s 193 cl 2 contemplating only cases for trial. REFERENCE BY THE SESSIONS JUDGE OF SURAT I. L R., 9 Bom., 352

55 ——— *Criminal Procedure Code, s 289—"No evidence"—Acquittal of accused without taking opinions of assessors* —The words "there is no evidence" in s 289 of the Code of Criminal Procedure, 1882 cannot be extended to mean no satisfactory, trustworthy, or conclusive evidence; but the third paragraph of the section means that, if at a certain stage of a Sessions trial the Court is satisfied that there is not on the record any evidence which, even if it were perfectly true, would amount to legal proof of the offence charged, then the Court has power, without consulting the assessors, to record a finding of not guilty But where a Court so acts only because it considers the evidence for the prosecution unsatisfactory untrustworthy, or inconclusive, it acts without jurisdiction and its order discharging the accused is illegal. Even if not illegal for want of jurisdiction, such action is a serious irregularity, which may or perhaps must have caused a failure of justice within the meaning of s. 537 of the Code of Criminal Procedure *In the matter of the petition*

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of Narain Dass, I. L. R., 1 All., 610, referred to. QUEEN-EMPRESS *v.* MANNA LALL [I. L. R., 10 All., 414

56. ——— *Sanction to prosecute by District Judge—Trial by same Judge as Sessions Judge—Criminal Procedure Code (Act X of 1882), ss. 195, 487—Penal Code, s. 196.*—A Sessions Judge is not debarred by s. 487 of the Criminal Procedure Code from trying a person for an offence punishable under s. 196 of the Penal Code, when he has as District Judge given sanction for the prosecution under the provisions of s. 195 of the Code of Criminal Procedure. *Madhub Chunder Mozumdar* v. *Novodeep Chunder Pundit, I. L. R., 16 Calc., 121,* overruled. *Empress* v. *D'Silva, I. L. R., 6 Bom., 479,* referred to. QUEEN-EMPRESS *v.* SARAT CHANDRA RAKHIT . I. L. R., 16 Calc., 766

57. ——— *Criminal Procedure Code, ss. 193, 287, 288—Cancellation of conditional pardon to prisoner—Approver, Trial of—Proof of confessional statements of accused.*—Several persons were charged with dacoity. While the case was pending, two of the accused made confessional statements; afterwards a conditional pardon was tendered to them, and they were examined as witnesses by the Magistrate and subsequently on behalf of the prosecution in the Sessions Court, to which the other accused were committed for trial. They there denied that they had been taken as approvers, whereupon the Sessions Judge placed them in the dock, called on them to plead, and permitted the depositions made by them before the Magistrate, but not their confessional statements, to be read to the jury. *Held* that the trial of the two persons, who had not been committed to the Sessions Court, was *ultra virès.* The proper course was to have treated the evidence given by them before the committing Magistrate as evidence in the case under s. 288 of the Code, and to have allowed the other accused to cross-examine them. *Per curiam.*—The Sessions Judge committed an irregularity in refusing to place on the record the confessional statements of persons whom he treated as accused. QUEEN-EMPRESS *v.* RAMA TEVAN [I. L. R., 15 Mad., 352

58. ——— *Conditional pardon to prisoner—Withdrawal of pardon and trial of person pardoned conditionally—Approver, Trial of, jointly with other accused—Power of Sessions Court to try person not committed—Criminal Procedure Code, s. 193.*—Two persons, *J* and *U*, were charged with the murder of *U*'s husband, and in the course of the police inquiry made certain statements to the police. They were then sent up by the police to a Deputy Magistrate for inquiry. *J* made three statements on the 28th of February, the 1st of March and the 9th of March 1894, respectively, two of which were confessions, the third being a withdrawal of such confessions. *U* also made two statements on the 2nd and 9th of March, the first of which was a confession, and the second a withdrawal thereof. On the 27th of April *U* was tendered a pardon, and was thereafter treated as an approver, in which capacity she gave evidence against *J*. *J* was then committed to the Court of Sessions to take his trial, *U* being sent up as an approver. In the Sessions Court *U* resiled from her deposition before the committing Magistrate, and was then and there treated as an accused person, and placed on her trial with the other accused and the deposition aforesaid was put in as evidence. Both accused were convicted mainly on their confessions, *J* of murder and *U* of abetment of murder. *Held* that the conviction of *U* was bad, the Court of Sessions having had no jurisdiction to try her, as she was never committed to that Court by any competent Magistrate. QUEEN-EMPRESS *v.* JAGAT CHANDRA MALI [I. L. R., 22 Calc., 50

59. ——— *Powers of Sessions Judge on revision—Further enquiry—Power of Sessions Judge to direct—Criminal Procedure Code (Act X of 1882), ss. 423, 435, 436, 439.*—A complaint was made before a Magistrate, which involved a charge of dacoity against the accused person and others. The Magistrate, in dealing with the case, proceeded under s. 209 of the Code of Criminal Procedure, and, finding no case of dacoity *primâ facie* established, proceeded to frame charges under s. 254 of the Code charging the accused with offences under ss. 380 and 448 of the Penal Code, *viz.*, theft in a building and criminal trespass. Having heard the whole of the evidence, he then acquitted the accused under s. 258 of the Code, and gave him sanction under s. 195 to prosecute the complainant under s. 211 of the Penal Code. The complainant then applied to the Sessions Judge to revoke that sanction. The Sessions Judge proceeded to consider the whole case, and finding that a proper inquiry had not been made and all evidence available not taken, and that, had this been otherwise, a Sessions case might have been established, directed the Magistrate to hold a further inquiry, and to proceed, in accordance with the result of such inquiry, either to commit the accused to the Sessions or grant the sanction, as the case might be. *Held* that the Sessions Judge had exercised a jurisdiction not vested in him by law. Acting as a Revision Court, he could send for the record for any purpose mentioned in s. 436, but he was not competent under s. 436 to direct a fresh inquiry, inasmuch as the accused had not been improperly discharged of an offence triable exclusively by a Court of Session, but had been acquitted of an offence within the Magistrate's jurisdiction. The Sessions Judge had in fact exercised the jurisdiction vested in him as an Appellate Court under s. 423, as if an appeal had been presented to him from an order of an acquittal; such powers in revision cases are only conferred on the High Court. BAIJANATH PANDEY *v.* GAURI KANTA MANDAL . . . I. L. R., 20 Calc., 633

60. ——— *Sessions Judge's power to review his order in proceedings taken to revoke sanction.*—A Sessions Judge, having once refused to revoke a sanction granted by a subordinate Court under s. 195 of the Criminal Procedure Code (Act X of 1882), has no jurisdiction afterwards to

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—continued.

review his order and set aside the sanction. An application to a Sessions Judge for revocation of sanction granted under s. 195 of the Code is a criminal proceeding in revision. Any order passed in such a proceeding is final, and cannot be reviewed or revived by him. *Queen-Empress* v *Fox, I. L R*, *10 Bom*, *176*, and *Mehdi Hasan* v. *Tota Ram*, *I. L R*, *15 All.*, *61*, referred to. QUEEN EMPRESS v. GANESH RAMKRISHNA I. L. R., 23 Bom, 50

61. ———————— *Appeal from a*

[illegible]

as the accused had pleaded guilty at the trial, he had no power to deal with the appeal except as [illegible] Code (Act X of 1882) had no application That section provides for convictions by Courts of Session or Presidency Magistrates only, and the exception is not only as to the extent, but also as to the legality of the sentence. QUEEN-EMPRESS v KALU DOSAN [I. L. R., 23 Bom, 759

62. ———————— *Criminal Procedure Code (Act V of 1898), ss 195, 476—Order by Deputy Magistrate sanctioning prosecution—Complaint by Deputy Magistrate—Jurisdiction of Sessions Court to interfere.*—A Deputy Magistrate, having decided that certain witnesses (who had given evidence before himself and before two other Magistrates on different occasions relating to charges of rioting and causing hurt) had wilfully committed perjury on one occasion or another, ordered them to be prosecuted for perjury and bound them over to take their trial The Sessions Judge set aside the said order, deeming it undesirable that sanction to prosecute should be given under the circumstances. *Held* that, whether the Deputy Magistrate had intended to pass an order under s. 476 or to make a complaint under s. 195 (1) (*b*) of the Code of Criminal Procedure, the Sessions Judge had no power to interfere. QUEEN EMPRESS v. AUKATYA [I. L. R., 23 Mad., 205

63. ———————— *Criminal Procedure Code (Act V of 1898), s. 436—Fresh inquiry after improper discharge of accused persons—Jurisdiction of Sessions Judge after acquittal.*—Charges under ss. 304 and 147 of the Penal Code were brought by the police against certain accused in the Court of a Deputy Magistrate, who took all the evidence for the prosecution, but went on furlough without passing any order of committal or otherwise. His successor, considering the evidence insufficient to support the charges, altered them to charges under ss. 325 and 147 of the Penal Code, and after hearing evidence for the defence acquitted the accused. The Sessions Judge, considering the alteration in the charges improper at such a stage, ordered a fresh inquiry into the offence. *Held* that the Sessions Judge had exercised jurisdiction not conferred upon him by law, and that his order for a fresh inquiry must be set aside. *Baijnath Pandey* v. *Gauri Kanta Mandal*, *I L R*, *20 Calc*, *633*, approved of QUEEN EMPRESS v HANUMANTHA REDDI . I. L. R., 23 Mad., 225

SET-OFF.

		Col.
1	GENERAL CASES . .	8538
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See COMPENSATION—CIVIL CASES.
[I L. R., 18 Bom., 717

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS
[5 B. L. R., Ap., 1

See ROAD CESS ACT
[I. L. R., 4 Calc, 576
11 C. L. R., 140

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—SET OFF.
[I. L. R., 20 Calc., 527
I. L. R., 21 Calc., 419

1 GENERAL CASES

1. ———— **Raising issue of set-off on trial**—*Procedure*—When a defendant raises a claim of set off on the trial of that issue, he must be considered as plaintiff. JAGADAMBA DASI v GROB [5 B. L. R., 639

As to how cases of set-off will be dealt with, *see* RAMGOPAL v MAJETI MALLIKKARJANUD
[1 Mad., 396

2. ———— **Power of Revenue Court to allow set off under Act X of 1859, s. 24**—*Suit by principal against agent*—A Revenue Court acting under the provisions of s 24, Act X of 1859, had jurisdiction to allow a set off for any sums which the agent might either have paid to his principal directly or used for the benefit of his principal with his sanction and authority MOHIMA RUNJUN ROY CHOWDHRY v NOLO COOMAR MISSER [18 W. R., 339

3. ———— **Written statement of set-off**—*Act VIII of 1859, s. 121*—Under s. 121, Act VIII of 1859, a defendant, desirous of setting off against the claim of the plaintiff the amount of any payment made by him on plaintiff's account, was bound to tender a written statement containing the particulars of his demand. POORNA CHUNDER ROY v. BEHAREE LALL MOOKERJEE . 14 W. R., 473

4. ———— **Character in which claim is made**—*Civil Procedure Code, s. 111—Written*

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

statement pleading a set-off.—In a suit in which the plaintiff sued, as son of a deceased vakil, to recover the amount of a promissory note and bond executed by the defendant to his deceased father, the defendant alleged in his written statement that the plaintiff's father had collected funds belonging to him, as his vakil, exceeding the amount due on the promissory note and bond and asked for a decree for the difference. *Held* (1) that the written statement must be regarded as a plaint in regard to the set-off, and should have been stamped accordingly; (2) that if the plaintiff claimed as the heir and representative of his father, the set-off was rightly pleaded. CHENNAPPA *v.* RAGHUNATHA . **I. L. R., 15 Mad., 29**

5. ———— **Right of set-off**—*Cross-demands arising out of same transaction.—Semble*—The right of set off will be found to exist not only in cases of mutual debts and credits, but also where cross-demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant be driven to a cross-suit. CLARK *v.* RUTHNAVALOO CHETTI . **2 Mad., 296**

6. ———— *Cross-demands arising out of same transaction—Suit to enforce contract—Damages.*—The right of set-off exists where there are cross-demands arising out of one and the same transaction, or where these are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit. In a suit to recover money due under a contract made between the plaintiff and defendants,—*Held* that the defendants were entitled to set off the amount of damages which the defendants had proved they had sustained by reason of the plaintiff's breach of the contract sued on. KISTNASAMY PILLAY *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . **4 Mad., 120**

7. ———— *Cross-demand arising out of the same transaction—Civil Procedure Code (Act XIV of 1882), s. 111.*—When the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under s. 111 of the Civil Procedure Code. *Bhagbat Panda* v. *Bamdeb Panda, I. L. R., 11 Calc., 557,* relied on. *Clark* v. *Ruthnavaloo Chetti, 2 Mad. H. C., 296,* referred to. CHISHOLM *v.* GOPAL CHUNDER SURMA **[I. L. R., 16 Calc., 711**

8. ———— *Civil Procedure Code, s. 111—Suit for balance of account.*—The defendant was lessee from Government of a bridge of boats over the Ganges under a lease for five years, the consideration for which was payable by instalments extending over the term of the lease. The lease contained, amongst other provisions, one to the effect that the Government, if it saw fit at the expiration of the lease to farm the bridge to any other contractor, should be bound to take over the lessee's plant at a fair valuation to be determined by arbitration; and another clause provided that "should the Government, however, see fit to cancel the lease during its currency with a view to substitute a pontoon bridge or for any other cause for which the lessee is not responsible, he will be entitled to compensation from Government for all losses." The lessee died before the expiration of the lease, and the Magistrate of the district, acting on behalf of the Government, proceeded to deprive his representatives of the use of the bridge and to seize the stock and materials. The Magistrate then directed two persons to assess the value of the stock, which was ultimately fixed at R10,900. The Magistrate added a percentage, bringing the total amount up to R12,100, and a suit was filed on behalf of Government against the representatives of the deceased lessee giving credit to the defendants for such amount, and claiming the balance due in respect of the last two instalments under the contract. *Held* that the sum of R12,100 assessed in the manner above described could not strictly be regarded as a set-off The suit was one for balance of account, and the defendants were entitled to dispute the correctness of the plaintiff's estimate of the item allowed in their favour. SECRETARY OF STATE FOR INDIA *v.* MADARI LAL **I. L. R., 13 All., 296**

9. ———— *Civil Procedure Code, ss. 111, 216—Cross-claims of the nature of set-off.*—The plaintiffs agreed to purchase from the defendant certain timber. They paid part of the price in advance and took delivery of some part of the timber, but refused to take delivery of the rest, and subsequently sued the defendant to recover part of the price paid, alleging that the portion of which they had taken delivery was not of the quality contracted for. *Held* that in such a suit the defendant might claim by way of set-off compensation for the loss which he had incurred in the re-sale of that portion of the timber, the subject of the contract, of which the plaintiffs had failed to take delivery. S. 111 of the Code of Civil Procedure is not exhaustive of the descriptions of cross-claim which may be allowed by way of set-off. *Clark* v. *Ruthnavaloo Chetti, 2 Mad., 296; Kistnasamy Pillay* v. *Municipal Commissioners for the Town of Madras, 4 Mad., 120; Kishorchand Champalal* v. *Madhowji Visram, I. L. R., 4 Bom., 407; Praji Lal* v. *Maxwell, I. L. R., 7 All., 284; Bhagbat Panda* v. *Bamdeb Panda, I. L. R., 11 Calc., 557;* and *Chisholm* v. *Gopal Chunder Surma, I. L. R., 16 Calc., 711,* referred to. NIAZ GUL KHAN *v.* DURGA PRASAD . . . . **I. L. R., 15 All., 9**

10. ———— *Right to set off a claim for unliquidated damages—Civil Procedure Code (Act X of 1877), s. 111—Costs—Act XXVI of 1864, s. 9.*—The provisions of the Civil Procedure Code (Act X of 1877) do not give the right to set off claims for unliquidated damages, but that Code does not take away any right of set-off, whether legal or equitable, which parties to a suit would have independently of its provisions. Where, therefore, in a suit for the price of goods sold and delivered, the

SET OFF—*continued.*

1. GENERAL CASES—*continued.*

defendant admitted that there was a sum of R1,159 12-0 due by him to the plaintiff, but sought to set off the sum of R972 as damages sustained by him by reason of the non delivery of some of the

tiff's suit was brought, and as the amount of the defendant's claims was capable of being immediately ascertained, the defendant might set off his claim *Clark v Ruthnavaloo Chetti, 2 Mad, 296,*

—*Held* that, notwithstanding the provisions of s. 9 of Act XXVI of 1864 the plaintiff was entitled to his costs. KISHORCHAND CHAMPALAL *v.* MADHOWJI VISRAM . . I. L. R., 4 Bom., 407

11. — *Right to set off a claim for an unascertained amount—Civil Procedure Code (Act XIV of 1882), s 111*—The provision of the Civil Procedure Code (Act XIV of 1882), s. 111, does not take away from parties any right to set-off, whether legal or equitable, which they would have had independently of that Code. And such right exists not only in cases of material debts and credits, but also where cross demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover, and the defendant should be driven to a cross suit. Where, therefore, a decree had been obtained against certain persons in respect of arrears of rent of an ijara held jointly by them, and one of them, having been forced to pay the whole amount of decree, sued the others

of rent due to them for the share on account of a portion of the land which he himself held in nij jote, and for which he had paid no rent, and that, on accounts being gone into, it would be found that their claim exceeded that of the plaintiff,—*Held*, following *Clark v. Ruthnavaloo Chetti, 2 Mad, 296,* and *Kishorchand Champalal v Madhowji Visram, I L R, 4 Bom., 407,* that notwithstanding the provisions of s. 111 of the Civil Procedure Code, the defendants' claim for the share of rents paid by them to the zamindar on account of the same ijara might properly be pleaded as a set off, and be taken into account in determining the plaintiff's suit as arising out of the same transaction, but that their claim for rent for the portion of the land held by the plaintiff in nij jote could not be treated in such manner, but must form the subject-matter of a separate suit. BHAGBAT PANDA *v* BAMDEB PANDA

[I. L. R., 11 Calc., 557

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

12. — — — *Right to set off*

the plaintiff contracted to indemnify the defendants for loss arising by reason of failure on his part to supply the wood as contracted for Defendants claimed a set off as damages for loss incurred by the plaintiff's failure to supply all the wood contracted for, such loss having arisen on the 25th October 1879 and subsequently. *Held* that, although, taking the word "ascertained" to mean "liquidated," the claim of the defendants for damages would not come within the meaning of a set off under s 111 of the Civil Procedure Code, that section was one regulating procedure, and was not intended to take away any right of set-off, whether legal or equitable, which parties would have had independently of its provisions, that the right of set-off would be found to exist not only in cases of mutual debts and credits, but also where the cross demands arose out of one and the same transaction, or were so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross suit, and that as, in the present case, the claim sprang out of the same contract which the plaintiff sought to enforce, and could readily be determined in the same suit, it was equitable that it should be so determined *Gauri Sahai v Ram Sahai, 7 N W, 157, Kistnasamy Pillay v Municipal Commissioners of Madras, 4 Mad, 120,* and *Kishorchand Champalal v. Madhowji Visram, I L R, 4 Bom, 407,* followed. *Per* OLDFIELD, J.—That the excess of the set-off in favour of the defendants over and above the claim of the plaintiff might properly be decreed to them and that the set-off should be allowed, if at all, to its full extent, and not merely to the extent of defeating the claim. *Per* DUTHOIT, *J.*—That although the set off might properly be admitted as an equitable protection to the defendants against being cast in the plaintiff's suit, the defendants could not, failing the provisions of s. 111 of the Civil Procedure Code, be allowed to recover a sum of money from the plaintiff, they having paid no court fees on that account. PRAGI LAL *v.* MAXWELL . . . I. L. R, 7 Mad., 284

13. — — — *Civil Procedure Code, 1859, s. 121—Suit or award determining several items—Mutual liability under award.*—G and R referred to arbitration disputes between them regarding the partition of their paternal estate The concluding portion of the award ran as follows: "Both parties shall jointly satisfy the debts on the creditors demanding payment, which debts are joint and have hereunder been declared payable by both parties. Should one party neglect to pay or show carelessness in the matter, and should the other be obliged to pay the whole amount of any such debts, the latter shall be competent to realize from the former portion of the debt paid on his account, together with costs and interest, by the enforcement

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

of this award, and shall also be entitled to recover the amount by suit in Court. Both parties shall act up to this award in its entirety. The sum of R338-0-9, which has been found due and payable by *G* to *R* as per account showing the mutual dealings between the parties, shall be made good as follows, *i.e.*, *G* shall pay to *R* the whole amount of R338-0-9 by the middle of the month of Pous 1276 Fasli, either in a lump sum or by instalments, and in case of non-payment within the said period he shall be charged with interest at the rate of one per cent. up to the day of payment." *R* sued to recover from *G* the money found to be due and payable to him under the award. *G* admitted the claim, but desired to set off half the amount of certain debts which were payable under the award by the parties jointly, and which he alone had satisfied. The lower Appellate Court deducted from the claim items of the demand admitted by *R*, but refused to determine *G*'s right to set off the items which *R* disputed on the ground that they could be more conveniently inquired into in a separate suit. It was held (*per* STUART, *C.J.*, SPANKIE, *J.*, dissenting) that *G* was entitled to demand a set-off, and that the lower Appellate Court should have inquired into the disputed items of the demand, and not have referred *G* to a separate suit in respect of those items. GAURI SAHAI *v.* RAM SAHAI

[7 N. W., 157

14. ——— *Suit for redemption, Decree in—Set-off of costs against mortgage-money—Lien of attorney—Civil Procedure Code, 1877, ss. 111, 221.*—The decree in a redemption suit directed the plaintiff (the mortgagor) to pay the mortgage-money and interest to the defendant, and directed the defendant to pay the plaintiff the costs of the suit. *Held* that the plaintiff was entitled to set off the amount of his taxed costs against the mortgage-money which he was liable to pay under the decree, notwithstanding any claim that the defendant's attorney might have against the defendant in respect of the defendant's costs of suit. BRIJNATH DASS *v.* JUGGERNATH DASS I. L. R., 4 Calc., 742

S. C. BRIJONATH DASS *v.* JUGGERNATH DASS

[4 C. L. R., 122
I. L. R., 15 All., 9

15. ——— *Civil Procedure Code (Act XIV of 1882), s. 221—Costs due by mortgagee to mortgagor—Set-off against the mortgage-debt—Liability of mortgage for any balance—Redemption suit.*—The mortgagor is entitled to set off or deduct the amount of costs payable to him under the decree against or from the mortgage-debt payable by him. If the amount of the costs be larger than the mortgage-debt, the mortgagor is entitled to obtain possession at once of the mortgaged property and to recover the balance against the mortgagee. SIDU *v.* BALI . I. L. R., 17 Bom., 32

16. ——— *Insolvent Act, s. 39—Mutual credit—Civil Procedure Code, 1877, s. 111.*—Where there is a debt due from an insolvent prior to his insolvency to another from whom there was a debt which was in dispute due to the insolvent, in a suit brought by the Official Assignee to recover the latter debt, the defendant is entitled, under s. 39 of the Insolvent Act 11 and 12 Vict., c. 21, to set off the debt due from him to the insolvent against sums which may be claimed from him. MILLER *v.* BEER

[6 C. L. R., 294

17. ——— *Civil Procedure Code, 1882, s. 111—Court-fee on set-off.*—In a suit to recover a sum of money due as wages, the plaintiff alleging that the defendant had engaged him to sell cloth on his account at a monthly salary, the defendant claimed a set-off as the price of cloth which he alleged the plaintiff had sold on his account on commission. It appeared that the defendant had previously sued the plaintiff to recover the same amount as was now claimed by way of set-off, as being due for the price of cloth sold and delivered by the defendant to him; and the plaintiff (then defendant) pleaded that there had been no sale to him, but the cloth had been delivered to him on commission sale. The suit was dismissed on the ground that there was no proof of a sale of cloth, and the question whether any sum was due for cloth sold on commission sale was not gone into. The cloth now alleged to have been delivered on commission sale was the same as that alleged in the former suit to have been actually sold to the plaintiff. *Held* that the defendant was entitled, under s. 111 of the Civil Procedure Code, to set off the amount claimed as due for goods sold on commission against the plaintiff's demand. *Held* also that the court-fee payable on the claim for set-off was the same as for a plaint in a suit. AMIR ZAMA *v.* NATHU MAL . I. L. R., 8 All., 396

18. ——— *Liquidated sum due on bond—Suit for rent.*—A liquidated sum due on a bond is capable according to law, even without an agreement to that effect, of being set off against sums due for rent. WATSON & CO. *v.* BROJOSOONDUREE DEBIA . . . 16 W. R., 225

19. ——— *Debt due from deceased husband—Debt due to widow.*—A widow is liable for a debt contracted by her husband. Such debt may be set off against a debt due to her. GRISH CHUNDER LAHOORY *v.* KOOMAREE DABEA

[1 W. R., Mis., 23

20. ——— *Lambardar—Co-sharer—Revenue, Payment of—Profits, Suit for share of.*—*Held* (SPANKIE, *J.*, dissenting) that a lambardar, who had paid an arrear of Government revenue out of the collections of subsequent years without reference to the co-sharers, was entitled, in a suit against him by a co-sharer for his share of the profits for such subsequent years, to claim in the suit a deduction on account of such payment. UDAI SINGH *v.* JAGAN NATH . I. L. R., 1 All., 135

21. ——— *Purchase by patnidar of shares in zamindari—Set-off on payment of rent.*—The four defendants obtained jointly a patni lease of R, and subsequently purchased jointly a 5 annas share in the zamindari. Defendants 1 and 2 separated from 3 and 4, each taking 8 annas

SET-OFF—*continued*

I. GENERAL CASES—*continued*

tiff sued to recover the rent of 2 annas and 15

in the zamindari, and they alleged payment of 5½ annas of the patni rent to the 8 annas shareholder in the zamindari, and a set-off against the other 2½ annas against their own claim as zamindars *Held* that, as the defendants 1 and 2 were strangers to the transfer of the rights of defendants 3 and 4 to the plaintiff, they had, as between themselves and the plaintiff, a right still to do what they did formerly, namely, set off their patni liability against their zamindari right. GOOROO DYAL CHUCKERBUTTI *v.* KESHUB BIBEE . 20 W. R., 409

22. ———— *Rent, Suit for—Rent paid in kind—Set-off allowed for—Account*—In a suit for arrears of rent, where defendant pleaded that, under an arrangement between him and plaintiff's ancestors, payment had been made by him in cash or in kind, and asked for an account to be taken, the lower Court was held to have been wrong in decreeing the suit on the ground that it could not go into evidence on a question of set-off in a rent suit, and was bound to take an account. ROY NUNDEEPUT MOHATOON *v.* STEWART . . 23 W. R., 20

23. ———— *Plea of payment in suit for arrears of rent—Indirect payment*—In a suit by a zamindar for arrears of rent the defendant alleged that his tenure had been placed under the management of the Collector, and had so remained for a number of years, and that the Collector, from money realized by him as manager, had, in addition to satisfying all other claims of the plaintiff, paid the

off, and that, not being a debt due from the plaintiff to the defendant, it was not such a set off as could be allowed by the Court. *Held* that the plea was a plea of payment merely, and not in the nature of a set off KOONJO BEHARY SINGH *v.* NILMONEY SINGH DEO . . . . 4 C. L. R., 296

24.

sums paid by the defendant, on former occasions, for rent in excess of his own share of the rent, although such sums are not claimed in his written statement, the sums paid not being in the nature of a set-off GOOPEE CHAND DEY *v.* HURI MOHUN DEY [12 C. L. R., 539

SET-OFF—*continued.*

I GENERAL CASES—*continued.*

25. ———— *Civil Procedure*

1859, s 195, and the latter portion of s 121 being of the same effect and subject to the same rule as if it had been made in a separate suit RADHA RAM DEB *v* JAMES 20 W. R., 410

26. ———— *Decree for defendant on set-off where nothing found due to the plaintiff*—*Held* that a defendant may deny the plaintiff's claim, and also plead a set-off and obtain a decree for it, although no sum may be found to be due to the plaintiff. HAYATKHA *v* ABDULAKHA [6 Bom., A. C., 151

27. ———— *Civil Procedure Code, 1859, s 195—Counter claim—Deductions allowed in ascertaining mesne profits*—S 195. Act VIII of 1859, which enabled a defendant to obtain a decree against a plaintiff in respect of a counter-claim, was only applicable where defendant had been allowed to "set off" a demand against plaintiff's claim, and did not apply to a case where, in ascertaining a defendant's liability for mesne profits, deductions were allowed from the rent proved to have been received, in the nature of allowances made for costs of cultivation or collection expenses TILUCK CHAND *v* SOWDAMINEE DASSEE [25 W. R., 275

28. ———— *Subordinate Judge invested with Small Cause Judge's powers—Civil Procedure Code (Act XIV of 1882), s 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Procedure*—In a suit brought by the plaintiff to recover R36-7 9 from the defendant under the Small Cause jurisdiction of a Subordinate Judge, the defendant claimed to set off R72 which exceeded the pecuniary jurisdiction of the Judge as a Small Cause Judge. On reference to the High Court,—*Held* that the set-off might be pleaded by the defendant. The Judge would exercise his Small Cause Court jurisdiction in trying the claim of the plaintiff and his ordinary jurisdiction in trying the set-off. RAMPRATAP *v* GANESH RANGNATH [I. L. R., 12 Bom., 31

29. ———— *Civil Procedure Code, ss 111, 216—Suit for dissolution of partnership*—A suit for dissolution of partnership in which

of s. 111 of the Code of Civil Procedure, and a plea of set-off may be raised in such a suit, and if in consequence of such plea the Court of first instance decrees in favour of the defendant a sum above R5,000, then by reason of the provision in paragraph ii, s. 216 of the Code, an appeal from the

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

decree will lie to the High Court, and not to the District Court. RAMJIWAN MAL *v.* CHAND MAL [I. L. R., 10 All., 587

30. ——— *Claim of different nature.*—It is not equitable to allow a set-off against a claim relating to a particular account, stated, of a matter of another nature altogether. KALEE KOOMAR CHUCKERBUTTY *v.* HURO CHUNDER CHUCKERBUTTY . . . 17 W. R., 177

31. ——— *Amount in excess of jurisdiction of Court.*—A Court cannot entertain the question of set-off if the amount claimed by the defendant exceeds the amount cognizable by it. When a defendant pleads a set-off and claims a decree, the subject-matter of the suit is no longer the mere claim of the plaintiff, but the cross-claim of both parties. RAM LAL *v.* LANCASTER . 3 N. W., 114

32. ——— *Unascertained sums.*—Setting off an unascertained sum against another is a mode of settlement which, if suggested to the parties as a compromise, may, with their assent, be a fit end of a litigation, but cannot properly be made the basis of a decree between hostile litigants. BACHUN *v.* HAMID HOSSEIN. ABDOOL AZEEZ *v.* HAMID HOSSEIN 17 W. R., 113: 10 B. L. R., 45

33. ——— *Civil Procedure Code, 1859, ss. 121, 195—Claim for unliquidated damages—Suit on bill of exchange—Cross-demands.*—Ss. 121 and 195 of the Code of Civil Procedure (Act VIII of 1859) had not the effect of enlarging the right of set-off. In a suit against the acceptor to recover the amount due upon several bills of exchange, the defendant sought to set off a claim for unliquidated damages unconnected with the bills of exchange. *Held* that defendant had no right to set off his claim against the debt due to the plaintiffs. CLARK *v.* RUTHNAVALOO CHETTI . 2 Mad., 296

34. ——— *Unascertained damages—Civil Procedure Code, 1859, s. 121.*—Under s. 121, Act VIII of 1859, a defendant could not claim a set-off for damages in respect of an alleged breach of contract which had not been ascertained in a suit brought against him to recover the amount due on certain dishonoured hundis. RAM DYAL *v.* RAMDHUN DASS . . 3 Agra, 43

RAM LAL *v.* KOONDUN LALL . 3 Agra, 97

35. ——— *Separate debt—Joint and several debt—Directors.*—A separate debt cannot be set off against a joint and several debt, and directors cannot set off money due from the company to them against sums which they may be ordered to refund to the liquidators. NEW FLEMING SPINNING AND WEAVING COMPANY *v.* KESSOWJI NAIK [I. L. R., 9 Bom., 373

36. ——— *Joint and separate debts—Mutual dealings.*—*A* had dealings with a firm consisting of a father and two sons, who carried on business jointly. Shortly after the father's death, the two brothers separated, and *A* dealt with each separately, having notice of the separation. *A* could not set off, against a claim made by one of the brothers, in respect of the separate dealings between himself and *A*, a debt due to himself from the former joint concern. DHUNPUT SINGH *v.* FORBES [1 Ind. Jur., N. S., 354

37. ——— *Costs—Omission to award costs.*—A set-off cannot be allowed for costs not actually awarded, as where a decree of the High Court gave the successful appellant costs of that Court and of the lower Appellate Court, but omitted to award the costs of the first Court. HURO PERSHAD ROY CHOWDHRY *v.* FOOL KISHOREE DOSSEE [16 W. R., 308

38. ——— *Suit for carriage of goods—Set-off for damages.*—In a suit for money claimed on account of the carriage of goods in which defendant pleaded non-indebtedness and a set-off on account of damage caused to the goods,—*Held* that defendant could not answer the claim with the set-off on account of damages, though the extent, if any, to which defendant was entitled to draw back might be put in issue, after which it would still be open to defendant to bring an action against plaintiff for special damages. SCANLAN *v.* HERROLD . 10 W. R., 295

39. ——— *Suit for mesne profits—Civil Procedure Code, 1859, s. 121.*—A set-off is not admissible in a suit for mesne profits, which is not suit for a debt within the meaning of s. 121, Act VIII of 1859. ROTEE ROMON OOPADHYA *v.* GREEJA NUND OOPADHYA . . 5 W. R., 160

40. ——— *Unascertained mesne profits—Debt not due at time of suit.*—An indefinite claim for damages in the nature of unascertained mesne profits cannot be pleaded as a set-off against specific claim for rent of later years. Such damages must be sued for separately. In a suit for rent a defendant has no right to set off against the plaintiff's claim money in deposit with the plaintiff, unless such money was due and payable to the defendant at the time the suit was brought. GOCOOL COOMAR *v.* BHICHOOK SINGH . 22 W. R., 1

41. ——— *Civil Procedure Code, 1877, s. 111—Mortgage—Compensation for waste.*—The usufructuary mortgagee of certain land sued the mortgagor for the money due under the mortgage. The mortgagor alleged the mortgagee had committed waste and was liable to him for compensation which he claimed to set off. *Held* that under s. 111 of Act X of 1877 the amount of such compensation could not be set off. RAGHU NATH DASS *v.* ASHRAF HUSAIN KHAN [I. L. R., 2 All., 252

42. ——— *Claim against deceased father—Right to appropriate property.*—Where a widow administering her husband's estate sued to recover certain moveable property wrongly appropriated by her son, who pleaded a set-off on account of a claim against his father,—*Held* that

SET-OFF—*continued.*

1. GENERAL CASES—*continued.*

defendant was rightly referred to a separate suit. MANLY v. MANLY . . 14 W. R., 136

43. ———— *Civil Procedure Code, 1882, s. 111—Suit by creditor of deceased*—

of the difference The defendants claimed a set off in respect of *Z's* share of the liabilities of *M's* estate which had been satisfied by *A* as manager. *Held* that the set-off claimed could not be entertained in such suit. ABUL HASAN v. ZOHRA JAN

[I. L. R., 5 All., 299

44. ———— *Act VIII of 1859, s 121—Co sharers—Suit for contribution*—In a suit brought against a lessee of a portion of an estate by one of the co-sharers for money alleged to be due as the plaintiff's share of arrears of rent for a certain period, where the claim was admitted,—*Held* the defendant was not entitled to set off under s. 121, Act VIII of 1859, the plaintiff's share of the Government revenue of the whole estate which had been paid by the defendant for the period for which the arrears of rent were alleged to be due. *Held* also that there was no such connection between the claim of the plaintiff and the counter claim of the defendant as would entitle the defendant, as a matter of equity apart from legislative enactment to a set off. HOSSEINA BIBI v. SMITH

[13 B. L. R., 440 : 22 W. R., 15

share of the jumma of a talukh and alleging that they had obtained such portion of their share as the 14-anna talukhdars were liable for, sued the 2-anna sharer for what he ought to have contributed. The lower Appellate Court, finding that the defendant had a 2 anna share in the zamindari, as well as in the shikmi, considered that the one right might be set off against the other, and that the plaintiffs had consequently no claim against the defendant. *Held* that this conclusion was erroneous, for though there were in a certain sense opposing rights, still they were not mutual rights as between the parties to the present suit. The plaintiffs were entitled to get a 2 anna share of the jumma from the defendant and the 14-anna talukhdars jointly, and the defendant was entitled to get a like share from these 14-anna talukhdars and himself jointly, but the defendant had no right to set off the debt thus due to him against the debt due to the plaintiffs from the same persons. HURREE KISHORE ROY v. HUR KISHORE ADHIKAREE . . . . 23 W. R., 134

46. ———— *Debts not mutual—Disputed claim for rent in suit for payments*

and that a claim for rent by *B* against *C* but which *C* disputed, could not be admitted as an answer to *C's* claim in the present suit or as a set-off It is essential to the validity of a set off that the debts should be mutual, due from and to the same parties and in the same right. Bengal Regulation VIII of 1819, s. 13, and Bengal Act VIII of 1869, s. 62, discussed. BHOIRUB CHUNDER DOSS v. HAFEZUNISSA KHATOON . 2 C. L. R., 414

47. ———— *Suit for rent—Compensation for damage done in execution of decree.*—If the cultivator suffer damage in execution of a decree of the Civil Court, he may sue and claim compensation for such damage, but until such damage has been ascertained and decreed, it cannot be set off against a claim for rent HAI GOBIND SINGH v. SOONDER PAL 2 Agra, Pt. II, 177

48. ———— *Claim for rent—Suit for money paid to protect lease.*—A claim for rent cannot be pleaded as a set-off in a suit for money paid by the plaintiff on account of revenue to protect a lease in the nature of a mortgage held by him. HELRA LALL v. BISHEN SUHAYE 1 W. R., 297

49. ———— *Account Suit for—Cross appeal*—Of two appeals heard together the first was brought on the dismissal of a suit, in which the representatives of one, now deceased, of two parties claimed for his estate an account against the other, their suit having been dismissed on failure to prove the contract between the parties, and the second appeal was from a decree between the same parties for damages for the detention of property which had belonged to the estate of the deceased In the first the plaintiffs appealed, and in the second the defendant, who also, by cross appeal, claimed a sum which, as he alleged, would have been found due to him had accounts on both sides been taken in the first of the above suits. *Held* that, as the first suit was for an account only, and not for the recovery of money, rendering it at least doubtful whether a set-off could be pleaded in defence, and as also no issue had been framed or even asked for on the question, it was not open to the defendant to raise it on this cross appeal. NAN KABAY PHAW v. KO HTAW AH KO HTAW AH v. NAN KABAY PHAW

[I. L. R., 13 Calc., 124 : L. R., 13 I. A., 48

50. ———— *Civil Procedure Code (1882), s. 111—Counter-claim for damages—Costs of preparing a deed—Stamp duty.*—In December 1892 the plaintiffs agreed to supply the defendants with machinery for their mill near Calcutta. The defendants, being unable to pay for it in accordance with that agreement, entered into a

SET-OFF—*continued.*

1. GENERAL CASES—*concluded.*

supplementary agreement with the plaintiffs on the 10th August 1894, whereby it was arranged that the plaintiffs should accept shares in the defendant's company and debentures charged on the property in satisfaction of their claim. The agreement provided that the defendant company should forthwith execute an indenture of trust in favour of trustees to be named by the plaintiffs for the purpose of securing the said debentures, such indenture to be prepared by the plaintiffs' solicitors together with the debentures, at the expense of the company, and to be approved by the company's solicitors. It was lastly provided that this agreement should be treated as forming part of and supplemental to the agreement of December 1892. This agreement was signed by J. Marshall on behalf of the plaintiffs. The indenture and debentures were duly prepared by the plaintiffs and approved by the defendants' solicitors. The plaintiffs, having paid the solicitors' bill of costs in respect of the preparation of the indenture and debentures, now sued to recover the amount from the defendants under the terms of the above agreement of 1894. The defendants alleged that the plaintiffs had failed to carry out their part of the agreement of 1882, and contended that they were entitled in this suit to claim damages against the plaintiffs and to set them off against the plaintiffs' claim. *Held* that the defendant should not be permitted in this suit to claim damages against the plaintiffs for their alleged failure to carry out their part of the contract of 1892. Their counter-claim or set-off did not fall under s. 111 of the Civil Procedure Code (Act XIV of 1882), as it was not a claim for an ascertained sum of money, and, that being so, they could not claim as of right to have it investigated in this suit. Nor was there any equitable ground for admitting the counter-claim, as it could not be doubted that there would be considerable delay in investigating it, and there was no reason why the plaintiffs should have to wait so long for the money to which they were now legally entitled. *Held* also that the plaintiffs were entitled to include in their claim the stamp duty paid on the trust-deed. The agreement contemplated that the defendants should pay all the costs incidental to the execution of the deed. DOBSON AND BARLOW *v.* BENGAL SPINNING AND WEAVING CO.

[I. L. R., 21 Bom., 126

2. CROSS-DECREES.

51. ———— *Decrees under Act X of 1859.—Quære*—Where the provisions of s. 209 of the Civil Procedure Code, 1859, were applicable to decrees passed under Act X of 1859. DE SILVA *v.* AMEER SHAHA . . . . 16 W. R., 303

There is now no distinction in this respect between rent decrees and other decrees.

52. ———— *Award on private arbitration.*—An award of private arbitration *per se* did not come under the provisions of s. 209 of Act VIII of 1859, so as to be set off against a decree of Court. DHEERAJ SINGH *v.* DEEN DYAL SINGH

[11 W. R., 144

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

53. ———— *Requisites for right—Decrees in same Court for execution.*—Before cross-decrees can be set off the one against the other, it is necessary that they should be in the same Court for execution. EAST INDIAN RAILWAY COMPANY *v.* HALL . . . 3 N. W., 104

DE SILVA *v.* AMEER SHAHA . 16 W. R., 303

54. ———— *Requisites for right—Decrees in same Court for execution—Civil Procedure Code, 1859, s. 209.*—The provisions of s. 209, Act VIII of 1859, applied only to cross-decrees of the same Court between the same parties, or to cross-decrees between the same parties, though of different Courts, which had found their way for execution to the same Court. RAM COOMAR GHOSE *v.* GOBIND NATH SANDYAL . 7 W. R., 480

Reversing on review, S. C. GOBINDNATH SANDYAL *v.* RAMCOOMAR GHOSE . 6 W. R., 21

HADOO SIRDAR *v.* JADOO MONEE DOSSEE

[17 W. R., 46

55. ———— *Requisites for right—Decrees in same Court for execution.*—The decrees must be under execution at the same time. JUDOO NATH ROY *v.* RAM BUKSH CHUTTANGEE

[7 W. R., 535

56. ———— *Requisites for right—Decrees not in same Court—Act VIII of 1859, s. 209.*—Act VIII of 1859, s. 209, which provided for the set-off of cross-decrees, applied only to decrees of the same Court or decrees sent to a Court for execution. Therefore where, on application for execution of a decree in the Court of a Principal Sudder Ameen, it was sought to set off a decree obtained in the Judge's Court, which had not been sent to the Principal Sudder Ameen for execution,—*Held* that s. 209, Act VIII of 1859, did not apply. GIRISHCHANDRA LAHURY *v.* FAKIR CHAND

[B. L. R., Sup. Vol., 503 : 6 W. R., Mis., 72

57. ———— *Requisites for right—Decrees for definite sums—Civil Procedure Code, 1859, s. 209.*—In order to admit of a set-off being made when there are cross-decrees, the parties must be the same, and the sum due under each decree or decrees must be definite. REZAOODDEEN HOSSEIN *v.* FUZLOONISSA

[5 W. R., Mis., 12

58. ———— *Appeal from decree.*—A judgment-debtor is entitled to set off a decree whether the judgment-creditor may or may not intend to object on appeal to the judgment-debtor's decree. HURO PERSHAD ROY CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY

[5 W. R., Mis., 53

59. ———— *Set-off of joint decree—Civil Procedure Code (Act X of 1877), s. 246.*—A judgment-debtor may set off, against the amount of the decree against him, the amount of a decree which he has obtained against the decree-holder and other persons. HURRY DOYAL GUHO *v.* DIN DOYAL GUHO

[I. L. R., 9 Calc., 479 : 13 C. L. R., 93

SET OFF—*continued.*

2. CROSS-DECREES—*continued*

60. —— — *Civil Procedure Code, s 246* — Where a decree-holder holds a decree against several persons jointly, one of whom holds a decree against him singly, both decrees being executable in the same Court, it is competent to the holder of the joint decree, under the provisions of s. 246 of the *Code of Civil Procedure,* to plead such decree in answer to an application for execution of the decree against him singly RAM SUKH DAS *v* TOTA RAM [I. L. R., 14 All., 339

61. — ———— *Joint decree*— *Decr*[illegible] *Code.* [illegible] a dec[illegible] sepa[illegible] decree for money against *S* alone, which he wished to treat as a cross decree under s 246 of Act X of 1877 *Held* that the decree held by *S* and the other persons was not a decree between the same parties as the parties to the decree held by *M*, and M's decree could not therefore be treated as a cross decree under that section MURLI DHAR *v.* PARSOTAM DASS [I. L. R , 2 All , 91

62. ———— *Execution by two decree-holders—Act VIII of 1859, s. 209*—Where there were cross decrees, and one of the decree holders [illegible] *v.* TARAK CHANDRA BHUTTACHARJEE [3 B. L. R., A. C., 114 · 11 W. R., 488

63. ———— *Civil Procedure Code, 1859, s. 209—Attachment*—In April 1877 *M* sued *S* for money, and on the 10th May 1877 *S* sued *M* for money, both suits being instituted in the same Court In the meantime, on the 9th May 1877 *B* applied for the attachment of the money claimed by *M* in his suit, and obtained an order prohibiting *M* from receiving, and *S* from paying, any sum which might be found in that suit to be due by *S* to *M*. On the 23rd June 1877 *M* obtained a decree in his suit against *S*, and *S* obtained a decree in his suit aga[illegible] sum. On the [illegible] s. 209 of Act [illegible] sum was entered on both decrees, and execution taken out of *S*'s decree for so much as remained due. At the same time *S* objected to *B*'s attachment, but his objection was disallowed. *Held,* in a suit by *S* against *B* to have the order disallowing his objection set aside and the property and legality of the set off above mentioned established, regard being had to the provisions of s. 209 of *Act VIII of 1859, that the* attaching order of the 9th May could have no operation or effect, and that, even if *B* had followed up that order and attached *M*'s decree against *S*, that step would not have put him in a better position, for the same section being followed, and the decrees being essentially cross decrees, that for the smaller sum became absorbed in the one for the larger, and attachment could not affect it. BHUJHAWAN LAL *v.* SUKHRAJ RAI . . I. L. R., 2 All., 866

64. ———— *Cross-decrees for* [illegible] rees for [illegible] he same [illegible] part of the land embraced in the latter, each party may take out execution and be entitled to receive wasilat separately ANUND MOHUN HAJRAH *v* SHIBO SOONDUREE DABEE . 16 W R., 256

65. ——— —— — *Cross decrees for mesne profits*—In 1827 *S* commenced a suit against *B*, and before judgment applied for and obtained, under Bengal Regulation II of 1806, an attachment of certain immoveable property belonging to the defendant In 1828 *S* obtained a decree, upon which he did nothing immediately, but in 1844 he sold the *attached property in execution and purchased it him*self Thirteen years after *B* commenced proceedings to set aside that sale, and in 1860 obtained a final decree reversing the sale, restoring to him the possession and awarding him mesne profits. The mesne profits were ascertained, and a third party (*R*) attached the decree [illegible] not in execution when rights of third parties had accrued, and that what *R* sought was not the mesne profits attached by *S* under the decree of 1828, but the amount decreed to be paid by *S* to *B* RAM COOMAR GHOSE *v* GOBIND NATH SANDYAL 12 W R., 391

66. ——— — *Decree not enforceable*—A decree which is incapable of being enforced cannot be set off against a decree which is alive HURO PERSHAD ROY CHOWDHRY *v* FOOL KISHOREE LOSSEE . 16 W. R., 308

67. ——— *Decree barred by lapse of time*—A set-off is not admissible, except upon a cross-decree which the decree-holder is seeking to execute, and not upon a cross decree incapable of execution by lapse of time. A cross decree must be kept alive by the action of the party entitled under it. ANUND MOHUN SURMA MOJOOMDAR *v* HURO CHUNDER BHUTTACHARJEE . 5 W. R., Mis., 16

PROSUNNO COOMAR GHOSE *v* SHAM LAL GUNGOPADHYA . . 5 W. R., Mis., 8

HEMRAJ CHOWDHRY *v.* ASOODUN [5 W. R., Mis , 43

68. —— —— — —— *Civil Procedure Code, 1859, s. 209—Decree barred by limitation*—In a suit for resumption of land, plaintiff obtained a decree for a portion of her claim, with costs in proportion Subsequently, on application for a review, she obtained a further decree for the rest of her claim. The latter decree was reversed on appeal by the High Court, who gave defendants all costs of the proceeding

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

in proportion. Plaintiff allowed more than three years to elapse from the date of the former decree without applying for execution; but when defendant applied to execute his decree for costs, she petitioned for a set off of so much of the costs as had been decreed to her. *Held* that these two judgments and decrees must be treated as reduced to one, wherein judgment was given in part for the plaintiff and in part for the defendant; and before issuing a warrant of execution, the Court was bound to ascertain how much, on the whole case, was due to the party executing, and to issue a warrant for that sum and no more. *Held* further that no question of limitation could arise in respect to the execution of the first decree, which became incapable of execution as soon as the High Court's decree in appeal (which was for a larger sum) was passed; but that the latter, under s. 209, Code of Civil Procedure, could only be executed to the extent of the difference between the two decrees. NUBO LALL KHAN *v.* MAHARANEE OF BURDWAN

[9 W. R., 590

69. ———— *Act VIII of 1859, s. 121.*—*A*, by deed of zur-i-peshgi, let certain lands to *B*, to secure a sum advanced by him to her and interest thereon. *B* covenanted to pay certain dues annually to *A*. On failure by *B*, *A* obtained a decree against him for the amount. In execution of a decree against *B*, *C* purchased his interest in the sum secured by the deed of zur-i-peshgi, and sued *A* to recover the same. *Held* that *A* was entitled in such suit to set off the amount of the decree obtained by her against *B*. BHAGWANI KUNWAR *v.* LALA BAIJNATH PRASAD

[2 B. L. R., A. C., 84: 10 W. R., 380

70. ———— *Assignee of decree, Right of.*—Where execution of *A*'s decree against *B* was stayed pending the passing of a decree in *B*'s cross-suit,—*Held* that no subsequent purchase *of B's rights and interests in his cross-suit could* be set up as a bar to *A*'s rights to attach the whole of the decree in the cross-suit, in execution of his decree against *B*. PEELOO CHOWDHRAIN *v.* COURT OF WARDS . . . . . 7 W. R., 219

71. ———— *Assignment of decree—Act VIII of 1859, s. 209—Act XXIII of 1821, s. 11.*—The plaintiffs obtained a decree against *B* in the Subordinate Judge's Court. Some time afterwards *B* recovered a decree in the Munsif's Court against the plaintiffs. The plaintiffs thereupon applied for the attachment of this decree in satisfaction of their own against *B*. Before attachment, however, *B* assigned her decree to *C*. On *C* trying to execute *B*'s decree against the plaintiffs, they brought the present suit for a declaration of their right to have a set-off made of the two decrees. *Held* that such a suit would not lie. RUGHU NUNDUN RAIN *v.* SUMESSAR PANDAY

[13 B. L. R., 489: 22 W. R., 235

72. ———— *Civil Procedure Code, 1859, s. 209.*—*A* obtained a decree in a Court of the N.-W. Provinces against *B*. *C*, taking the decree *bonâ fide* by assignment, applied to execute it in the 24-Pergunnahs. *B*, who got a decree against *A* in the 24-Pergunnahs, applied to have the decree set off against the other decree in the hands of *C*. *Held* that, in such circumstances, s. 209, Act VIII of 1859, did not apply. ROZEEODDEEN *v.* JEHANGEER

[5 W. R., Mis., 22

73. ———— *Purchaser of decree—Act VIII of 1859, s. 209.*—The purchaser of a decree sought to execute the decree, but was opposed by the judgment-debtor, who sought to set off two other decrees obtained by herself and her two sisters against the judgment-creditor. These decrees were obtained about the date of the purchase, but it did not appear whether previously or subsequently. *Held* in neither case could they be the subject of a set-off. KASIMUNISSA BIBI *v.* HILLS

[6 B. L. R., Ap., 125: 15 W. R., 127

74. ———— *Purchaser of decree—Act VIII of 1859, s. 209.*—*A* and *B*, having obtained a decree for a sum of money against *C* and *D*, sold part of their interest therein to *E*, who afterwards sold the same to *F*. *G* obtained a decree against *F*, and in execution attached and sold *F*'s interest in the decree obtained by *A* and *B*, and *H* became the purchaser of the same. He applied for execution against *C* and *D*. *C* claimed to have set off the amount of a decree obtained by his son *I* against *G*, and which *C* alleged was held by *I* benami for him as a cross-decree within the meaning of s. 209 of Act VIII of 1859. *Held* that the decree could not be set off. TARACHAND GHOSE *v.* ANANDA CHANDRA CHOWDRY

[3 B. L. R., A. C., 110: 10 W. R., 450

75. ———— *Purchaser of decree—Act VIII of 1859, s. 209.*—The purchaser of a decree held by *A*, against whom *B* holds a cross-decree, takes it subject to a set-off on account of *B*'s decree. KAIM ALI JAWARDAR *v.* LAKHIKANT CHUCKERBUTTY

[1 B. L. R., F. B., 23: 10 W. R., F. B., 32

NUNDO COOMAR BUKSHEE *v.* KOONJO KISHORE ROY . . . . . 6 W. R., Mis., 73

DOORGA CHURN NUNDEE *v.* DEBNATH ROY CHOWDHRY . . . . 18 W. R., 442

OOPENDRO MOHUN MOOSTAFEE *v.* POORNA CHUNDER BHUTTACHARJEE . . 19 W. R., 85

RAM CHUNDER *v.* MOHENDRO NATH BOSE

[21 W. R., 141

76. ———— *Civil Procedure Code, 1859, s. 209.*—*A* got a decree against *B*, who subsequently got a larger decree against *A*, which he sold to *C*. After that *A* executed his decree, and put up *B*'s decree for sale and bought it himself. *C* then took out execution against *A*, who, having unsuccessfully put in a claim under Act VIII of 1859, s. 246, brought a suit to have his claim established, and the sale of *B*'s decree to *C* declared collusive. Both the lower Courts found that the sale was *bonâ fide*. *Held* that this finding could not be set aside on special appeal, but that, when *C* took out

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

execution, *A* might apply for a set-off under s. 209. SHEO NARAIN SINGH *v.* CHOONEE BHUGOUT [24 W. R., 299

77. —— —— —— *Fraudulent as-*

. . . assignment as fraudulent,—*Held* that it was fraudulent, and the right of set off was unaffected

[7 W. R., 470

78. —— *Civil Procedure Code, 1877, s.* 246—*Execution of cross decrees*—

. . . the judgment upon which the execution issues. Notwithstanding anything in s. 246 of the Code of Civil Procedure, he is not bound to inquire whether the judgment debtor holds a cross decree of higher amount against the decree holder any more than he is to inquire, in an ordinary case, whether the decree under which execution has issued, has been satisfied or not. These are questions to be determined by the Court issuing execution. Where property sold in execution of a valid decree, under the order of a competent Court, was purchased *bonâ fide* and for fair value,—*Held* that the mere existence of a cross decree for a higher amount in favour of the judgment-debtor, without any question of fraud, would not support a suit by the latter against the purchaser to set aside the sale. REWA MAHTON *v.* RAM KISHEN SINGH . . I. L. R., 14 Calc., 18 [L. R., 13 I. A., 106

MOTHURA MOHUN GHOSE MUNDUL *v.* AKHOY KUMAR MITTER . . I. L. R., 15 Calc., 557

79. —— *Civil Procedure Code, 1859, s.* 209—*Stay of execution of decree*—Where a decree for the plaintiff has been obtained in a suit, and a cross-suit is pending, the Court will *not stay proceedings* in execution of the first suit, or order the proceeds of that decree to be paid into Court to abide the result of the second. MOOLCHUND *v.* RAJNARAIN GHOSE . 1 Ind. Jur., N. S., 330

80. —— *Civil Procedure Code, 1859, s.* 209, *Procedure under*—When an application to stay execution of a decree is made to a Court in which a suit is pending against a decree-holder, the Court's competency, under s. 209, Act VIII of 1859 to grant the application depended on the decree being its own decree. An application of this nature ought not to be entertained, in the absence of an affidavit or satisfactory proof of the complaints alleged in it, without the Court calling for such proof. MITTUA BIBEE *v.* BUZLOOR KHAN [8 W. R., 392

81. —— *Civil Procedure*

. . . [12 W. R., 212

82. —— *Pending suit by defendant in which he has credited sum sued for*—*Stay of suit*—In a suit brought in a Small Cause Court to recover balance of rent due, the defendant pleaded the pendency of a suit brought by him in the District Munsif's Court against the plaintiff for damages for illegal dispossession, and that he had given credit against the amount of damages for the balance of rent due. *Held* that the pendency of the suit in the District Munsif's Court was not a bar to the present suit, but that it was open to the Court, in its discretion, to postpone the hearing of the present suit until the District Munsif had given his decision. MUTTUKARUPPA KAUNDAN *v.* RAMA PILLAI . . . . . 3 Mad., 158

83. —— *Right to execution of decree*—*Obligation to set off*—Where two parties have to recover sums from each other under the same decree (not cross decrees), the party entitled to the lesser sum cannot be allowed to take out execution against the party entitled to the larger sum, and the Court is bound to direct a set-off or to enter satisfaction of the smaller sum upon the decree. JUGO MOHUN BUKSHEE *v.* SOORENDRONATH ROY CHOWDHRY . . . 13 W. R., 106

84. —— —— —*Decree in favour of one party with costs in favour of the other*—*Civil Procedure Code, 1859, s.* 209—When a decree in favour of an appellant describes a set of costs as due by the appellant to the respondent, it means not that any sum should be actually paid to the latter, but that the costs in question should be deducted from the gross amount decreed, and the remainder only recovered under the decree. S. 209, Code of Civil Procedure, had no application in such a case. ISSUR CHUNDER MOOKERJEE *v.* MUNMOHUN CHOWDHRY . . . 12 W. R., 308

85. —— *Civil Procedure Code, 1882, ss.* 246, 247—*Execution of decree*—*Cross-decrees*—*Simple money-decree*—*Decree enforcing mortgage*—S. 246 of the Civil Procedure

SET-OFF—*continued.*

2. CROSS-DECREES—*continued.*

Code is applicable to cross-decrees and not to cross-claims under one decree. To make s. 247 of the Code applicable in the case of cross-claims under one decree, the parties entitled thereunder to recover from each other must hold the same character and possess identical rights of enforcing execution, and enforcement of the decree can only be refused, or satisfaction entered up, when this is the case. *Held* therefore, where a decree for money of a Court of first instance directed that the money should be realizable from certain specific property of the defendant, and exempted his person and other property, and the lower Appellate Court modified this decree by extending it to the person of the defendant, and in second appeal the High Court set aside the lower Appellate Court's decree and restored that of the first Court, directing that the costs of the defendant in the lower Appellate Court and in the High Court should be paid by the plaintiff, that, inasmuch as the plaintiff was only entitled to recover the judgment-debt due to him from the defendant from such specific property, whereas the defendant was entitled to recover the judgment-debt due to him from the plaintiff from his person and property, the provisions of s. 217 were not applicable. KALKA PERSHAD *v.* RAM DIN . **I. L. R., 5 All., 272**

86. — — — *Costs—Two awards of costs in same decree—Execution of decree.*—Where a Court makes two different awards of costs in one and the same decree, when it ought to have made a decree only for the difference between them,—*Held* that execution could only be taken out for the difference between the two amounts awarded. AMJUD ALI KHAN *v.* FAZUL HOSSEIN **[19 W. R., 187**

87. — — — — *Conditional decree—Purchase-money—Costs—Civil Procedure Code, 1882, ss. 214, 221, 247—Decree in suit for pre-emption.*—The decree in a suit to enforce a right of pre-emption directed, in accordance with the provisions of s. 214 of the Civil Procedure Code, that the plaintiff should obtain possession of the property and recover costs of the suit from the defendants (vendor and vendee), on payment of the purchase-money within a fixed time, but that, on default of such payment, the suit should stand dismissed. The plaintiff deposited within time the purchase-money with the exception of a sum less than the amount of costs awarded to him. He subsequently applied for delivery of possession of the property in execution of the decree and for the recovery of the costs awarded to him, deducting from such costs the unpaid portion of the purchase-money. *Held,* applying, by analogy of ss. 221 and 247 of the Civil Procedure Code, the equitable doctrine of set-off, that the plaintiff was entitled, when depositing the purchase-money under the decree, to deduct therefrom the sum the decree awarded to him as costs, and that therefore the decree did not become null and void by reason that he had not deposited the full amount of the purchase-money within time. *Degumburee Dabee* v. *Eshan Chunder Sein, B. L. R., Sup. Vol., 938: 9 W. R., 230; Jugo Mohun Bukshee* v. *Soorendro Nath Roy Chowdhry, 13 W. R., 106;* and *Brijnath Dass* v. *Juggernath Dass, I. L. R., 4 Calc., 742,* referred to. ISHRI *v.* GOPAL SARAN . . . . **I. L. R., 6 All., 351**

88. — — *Civil Procedure Code (1882), s. 247—Cross-claims under the same decree—Costs under the same decree recoverable in different ways.*—S. 247 of the Code of Civil Procedure is not limited in its application to cases in which the remedy of each party against the other is of precisely the same nature. Thus, where one party to a suit was entitled to recover certain costs by means of the sale of hypothecated property, and the other party under the same decree was entitled to recover a smaller sum as costs from his opponent personally, it was held that s. 247 of the Code applied, and that the costs recoverable personally could be set off against the costs recoverable by sale of the hypothecated property. *Kalka Prasad* v. *Ram Din, I. L. R., 5 All., 272,* dissented from. BHAGWAN SINGH *v.* RATAN . **I. L. R., 16 All., 395**

89. — — *Civil Procedure Code (1882), ss. 246, 247—Execution of decree—Parties entitled under same decree to recover from each other.*—A plaintiff obtained a decree for the surrender to him of certain mortgaged property on his paying the defendants the mortgage amount within three months together with the value of improvements, and for the payment by defendants to him of the costs of suit. He applied to recover the said costs by the arrest of the defendants. *Held* that the defendants were entitled under s. 247 of the Code of Civil Procedure to set off the amount payable by them to plaintiff by way of costs against the mortgage amount and value of improvements payable by plaintiff to them. *Bhagwan Singh* v. *Ratan, I. L. R., 16 All., 395,* approved. SANKARA MENON *v.* GOPALA PATTAR . **I. L. R., 23 Mad., 121**

90. — *Civil Procedure Code, ss. 246, 247, 411—Cross-decrees in same decree—Recovery by Government of Court-fees in pauper suit.*—A plaintiff suing *in formâ pauperis* to recover property valued at R60,000 obtained a decree for R1,439. The Court, with reference to the provisions of s. 411 of the Civil Procedure Code, directed that the plaintiff should pay R1,196 as the amount of Court-fees which would have been paid by him if he had not been permitted to sue as a pauper. The Collector having applied under s. 411 to recover this amount by attachment of the R1,439 payable to the plaintiff, the defendant objected that (i) certain costs payable to her by the plaintiff under the same decree, and (ii) a sum of money payable to her by the plaintiff under a decree which she had obtained in a cross-suit in the same Court, should be set off against the R1,439 payable by her to him, with reference to ss. 246 and 247 of the Code, and that thus nothing would remain due by her which the Government could recover. No application for execution was made by the plaintiff for his R1,439, or by the defendant for her costs. In appeal from an order allowing the Collector's

SET-OFF—*continued.*

2 CROSS-DECREES—*continued.*

application, it was contended that the "subject-matter of the suit" in s. 411 of the Code meant the sum which the successful pauper plaintiff is entitled to get as a result of his success in the suit; but that in the suit and the cross suit taken together, the plaintiff ultimately stood to lose a small sum, the defendant being the holder of the larger sum awarded altogether *Held* that the contention had no force, as execution had not been taken out by the plaintiff or the defendant or both, and it could not be said that the Government had been trying to execute the plaintiff's decree, or was a representative of the plaintiff as holder of the decretal order in his favour for R1,430 so as to bring into operation the special rules of ss 246 and 247 of the Code between him and the defendant. *Held* also that the plaintiff was one who, in the sense of s 411, had succeeded in respect of part of the "subject-matter" of his suit, and on that part therefore a [illegible] modification of the "subject matter" of the suit decreed against the defendant as payable by her to the plaintiff had arisen or could be entertained. JANKI *v.* COLLECTOR OF ALLAHABAD [I. L. R., 9 All., 64

91. *Civil Procedure Code (Act XIV of 1882), ss. 233, 243, 546—Execution of assigned decree—Set-off against assigned decree partly executed* —*A B* had obtained a decree against *K* and *T*. After the decree had been partially satisfied, *A B* assigned it to *D* Prior to the date of the assignment, *K* and *T* had instituted a suit against *A B* and *D*, and ultimately obtained a decree against both of them. *Held* that *K* and *T* were entitled to set off their decree against the unexecuted portion of the decree which had been assigned to *D*. KRISTO RAMANI DASSEE *v* KEDAR NATH CHAKRAVARTI . I. L. R., 16 Calc., 619

92. ——— *Civil Procedure Code, s 246—Limitation.*—Under two decrees of the Sudder Dewany Adalat passed in 1864, *A* was entitled to two thirds and *B* to one third of certain immoveable property, with mesne profits in proportion. Each obtained possession of the immoveable property decreed to him. *B* appealed to the Privy Council from both decrees in respect of the two-thirds awarded to *A*. In April 1866, pending the appeal, *A* applied for an account of the mesne profits due to him after setting off the mesne profits due to *B*, but as he failed to comply with a condition requiring him to give security for the amount claimed, in case the Privy Council should allow *B*'s appeal, the application was struck off. In January 1867 *B* applied for the mesne profits of the one-third decreed to him, and the Court found R18,700 to be the amount so due, but, on application by *A*, stayed further execution pending the Privy Council's decision In 1873 the Privy Council dismissed *B*'s appeal In 1885 *A*, in execution of the Privy Council's decree, applied for R50,000 as mesne profits in respect of the two-thirds. *B* at the same time applied that the R18 000 declared in 1867 to be due to him in respect of the one-third might be set off against the amount claimed by *A*. *Held* that the question of the amount due to *A* up to the date when he acquired possession of the two-thirds, and which had never yet been decided, should be re-opened from the point at which it was left in 1866, that if this amount exceeded the R18,000 declared in 1867 to be due to *B*, satisfaction of *A*'s claim to that extent should be entered up and the balance recovered from *B*, and that this course, if not strictly in accordance with the letter, was in accordance with the spirit of ss. 246, 247 of the Civil Procedure Code, and at all events should be allowed on principles of natural equity. *Held* also that, until the amount due to *A* had been definitely ascertained in the execution department, *B*'s right to maintain his set off did not arise, that the set-off was therefore not barred by limitation, that the order of January 1867 was equivalent to a decree for the amount declared thereby as due to *B*; that when the execution department had determined the amount due to *A*, that decision also would be a decree, and that s 246 of the Code could then be applied. MATADIN *v* CHANDI DIN [I. L. R., 10 All., 188

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See Cases under Sale for Arrears of Revenue—Incumbrances—Bengal Regulation XI of 1822.

See Stamp Act, 1879, s. 3, cl. 19.
[I. L. R., 7 Mad., 349
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See Stamp Act, 1879, sch. I, art. 57.
[I. L. R., 8 Mad., 453
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See Village Chowkidars Act, ss. 48, 51.
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——— Construction of—

See Hindu Law—Gift—Construction of Gifts . I. L. R., 12 Calc., 663
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See Hereditary Offices Act.
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——— made by guardian.

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——— on marriage.

See Marriage Settlement.
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See Will—Construction.
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——— Post-nuptial.—

See Transfer of Property Act, s. 53.
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——— Suit to set aside—

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——— Wife's equity to—

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[11 B. L. R., 144

1 CONSTRUCTION.

1. ——— Agreements made at time of settlement, Duration of.—*Held* on the construction of an "ikrarnamah" and settlement "roobkari" that it was binding on the plaintiffs only for the currency of settlement. In general

SETTLEMENT—*continued.*

1. CONSTRUCTION—*continued.*

engagements made at the time of settlement ought to be considered *primâ facie* as intended to subsist only for the time of settlement. Dial Singh *v.* Jawahir Singh . . . 2 Agra, 108

Ikram Ali Khan *v.* Ludwa . 2 Agra, 113

2. ——— Effect of settlement—*Duration of, and right created by, settlement—Transfer of proprietary right.*—Where a settlement of a talukh, although it ran for twenty years only, was with a person professing to be a proprietor,—*Held* that the settlement conferred a proprietary right, and not a limited interest; and that the plaintiff's vendor, having been admitted to a share in the settlement with a maliki allowance, became a co-sharer in the proprietary interest, which prorietary right had been transferred to the plaintiffs by their purchase. Pogose *v.* Aozan Bibee
[18 W. R., 274

3. ——— *Settlement by Government of land on which stood a hât—Calculation for purpose of settlement—Tools—Hât—Reg. XXVII of 1793.*—A settlement of land (on which stood a hât) by the Government to a private person, such settlement being arrived at by taking into calculation the profits of the hât, does not amount to a grant of the tolls, but of the land only; the reason for looking at the tolls being to ascertain the value of the land. Such a settlement therefore does not imply a monopoly which will enable the holder to restrain other persons from setting up another hât close by. Rakhal Das Addy *v.* Durga Sunduri Dasi. Durga Sundari Debi *v.* Rakhal Das Addy
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4. ——— *Summary Settlement Act (Bom. Act VII of 1863)—Nature of settlement under that Act—Settlement made and sanad issued under a mistake—Quit-rent paid by inamdars to Government under such settlement—Refund—Void agreement—Contract Act (IX of 1872), ss. 20, 65—Sanad, Meaning and effect of.*—Under the Bombay Summary Settlement Act (Bombay Act VII of 1863), a settlement in respect of the village of Mankol was effected in 1864 between the Government and the plaintiffs, who were the inamdars, and a sanad was granted to the plaintiffs, under the terms of which a certain yearly quit-rent was payable by them to Government in respect of the said village. At the time of the settlement the plaintiffs believed that they were the superior holders of all the lands in the village, including certain wanta lands. It subsequently appeared, however, that the wanta lands were the property of certain girassias, who were in possession as owners, and that the plaintiffs were not the holders of these lands within the meaning of s. 32 of Bombay Act VII of 1863. The Government, however, required the plaintiffs to pay the entire quit-rent of the village for the Samvat years 1939 1940, as fixed by the sanad. The plaintiffs paid under protest and brought this suit to recover the amount (₨ 400-12-6) paid in respect of the wanta lands. *Held* that the plaintiffs were entitled to a refund of the quit-rent

SETTLEMENT—*continued.*

1. CONSTRUCTION—*concluded.*

all the lands in the village There was therefore a common mistake as to a matter of fact which both parties must have regarded at the time as essential to

wanta lands might be treated as distinct from that which applied to the remaining lands of the village, the former being void, and the plaintiffs being therefore entitled to a refund of the quit rent paid in respect of such lands under s. 65 of the Contract Act. A sanad issued under Bombay Act VII of 1863 merely declares what by s. 6 of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have consented; but it is by virtue of the settlement itself as provided by the Act that Government are entitled to demand payment of such rent SECRETARY OF STATE FOR INDIA v SHETH JESHINGBHAI HATHISANG [I. L. R., 17 Bom., 407

2 RIGHT TO SETTLEMENT

5. ——— Claim to settlement after resumption—*Beng Reg. II of 1819—Ex-lakhirajdar—Limitation* —Long possession gives no title to a settlement, unless the party claiming a settlement has put forward his claim when the lands were resumed, and the notice has issued to parties to assert their claims to such settlements, and has thus complied with the requirements of the law. GOLACK CHANDRA CHOWDHRY v. ALI MOLLAH [8 B. L. R., 528 note

6. — — — Claim to permanent settlement after expiration of temporary one—*Forfeiture of right by conduct* —When a temporary settlement expires, whether the holder thereof had been the proprietor of the land within the meaning of the old regulations or a stranger, the proprietor is entitled to come forward and to claim as of right from the Government a permanent settlement of the land, unless he has by his own conduct forfeited that right. WATSON & Co. v. BROJO SOONDUREE DABEE . . . . . . 10 W. R., 395

On remand an order was made declaring the plaintiff entitled to the permanent settlement instead of the defendants, and confirmed on special appeal, subject to the proviso that such declaration would not entitle her to dispossess them if they were in possession as patnidars. WATSON & Co v. BROJO SOONDUREE DEBIA . . . 17 W. R., 376

7. Purchase of zamindari rights during maafi grant—*Rights on expiry of maafi grant* —An auction purchaser of the rights and interest of one of several zamindars who at the time of the purchase held only certain nankar land in lieu of their zamindari right during the continuancy of the maafi grant by Government to another party stands in the place of the zamindar, not in respect of the nankar land only, but in respect of all the right to settlement as zamindar after the maafi grant comes to an end. GOKUL PERSHAD v. RUGHONATH . . . . 3 Agra, 245

8. ——— Right among co-sharers—*Arrangement for collection and receipt by one co-sharer—Effect on rights of others on expiration of settlement* —Where at the time of settlement it was arranged that one co-sharer should make the collections and other co-sharers should receive money allowance, and such arrangement was to last for the term of settlement only,—*Held* that after the expiry of the settlement such co-sharers were, if the revenue authorities thought fit, entitled to be allowed to engage for their shares. KOONWER SINGH v. SHIB DYAL . . . . 3 Agra, 297

9 ——— Right on resumption—*Suit to set aside settlement* —In a suit by a person claiming certain lands which have been resumed by the Government, the plaintiff is entitled, on the allegation that he is the rightful owner of the lands and that the defendant obtained a settlement by false allegations of ownership and of possession, to an adjudication of his right to a settlement. It is not discretionary with the Collector under such circumstances to settle with any person he pleases for the land, nor is such settlement, if made, final as regards all claims. MAHOMED ISRAIL v WISE [13 B. L. R., F. B, 118 · 21 W. R., 327

the resumption, *H N*, the former holder of the tenure, claimed settlement as proprietor. The Government denied his title, but offered him a lease on his giving security. On his failure to find security, the Government in 1841 made a temporary settlement with *J S*, who entered into possession of the land. No malikana was reserved to or ever paid to *H N*. In 1863 the Government settled the land

right to a settlement as proprietor, the suit to enforce such right was barred by limitation, he having been effectually dispossessed, and the cause of action, if any, having accrued in 1841. *Note.*—The Court appeared to consider that in fact *H N* never had any right to maintain an action in the Civil Court to compel the Government to make a settlement with him. JOY MUNGUL SINGH v. POKHARUN SINGH. GOVERNMENT v POKHARUN SINGH 7 W. R., 465

11. — Right to settlement of person whose tenure is not cancelled—*Lease by Government after purchase at sale for revenue.*—A

SETTLEMENT—*continued.*

See Sale for Arrears of Revenue—Incumbrances—Act XI of 1859.
[14 W. R., 1
15 W. R., 141
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SETTLEMENT—*continued.*

1. CONSTRUCTION—*concluded.*

belief that the plaintiffs were the superior holders of all the lands in the village There was therefore a common mistake as to a matter of fact which both parties must have regarded at the time as essential to the agreement, it being made so by the Act itself under which they assumed to contract. Such a mistake under s 20 of the Contract Act (IX of 1872) renders the agreement void. The settlement as to the wanta lands might be treated as distinct from that which applied to the remaining lands of the village, the former being void, and the plaintiffs being therefore entitled to a refund of the quit rent paid in respect of such lands under s. 65 of the Contract Act A sanad issued under Bombay Act VII of 1863 merely declares what by s. 6 of the Act is stated to be the effect of the settlement to which both the Government and the holders of the land have consented; but it is by virtue of the settlement itself as provided by the Act that Government are entitled to demand payment of such rent SECRETARY OF STATE FOR INDIA *v* SHETH JESHINGBHAI HATHISANG

[I. L. R., 17 Bom., 407

2. RIGHT TO SETTLEMENT.

5. ——— Claim to settlement after resumption—*Beng. Reg II of 1819—Lx-lakhirajdar—Limitation* —Long possession gives no title to a settlement, unless the party claiming a settlement has put forward his claim when the lands were resumed, and the notice has issued to parties to assert their claims to such settlements, and has thus complied with the requirements of the law. GOLACK CHANDRA CHOWDHRY *v.* ALI MOLLAH

[8 B. L. R., 528 note

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[13 B L. R., F. B, 118 · 21 W. R., 327

10 ——— *Ghatwali tenures —Suit against Government for settlement—Limitation.*—A ghatwali tenure was resumed by the Government under Bengal Regulation II of 1819 After the resumption, *H N*, the former holder of the tenure, claimed settlement as proprietor. The Government denied his title, but offered him a lease on his giving security. On his failure to find security, the Government in 1841 made a temporary settlement with *J S*, who entered into possession of the land. No malikana was reserved to or ever paid to *H N*. In 1863 the Government settled the land permanently with *J S* The heir of *H N* then brought a suit in the Civil Court, praying that this settlement should be set aside, and for a declaration of his right to have a settlement concluded with him. *Held* that, supposing *H N* ever to have had any legal right to a settlement as proprietor, the suit to enforce such right was barred by limitation, he having been effectually dispossessed, and the cause of action, if any, having accrued in 1841. *Note.*—The Court appeared to consider that in fact *H N* never had any right to maintain an action in the Civil Court to compel the Government to make a settlement with him. JOY MUNGUL SINGH *v.* POKHAREUN SINGH GOVERNMENT *v.* POKHAREUN SINGH 7 W. R., 465

11. — Right to settlement of person whose tenure is not cancelled—*Lease by Government after purchase at sale for revenue* —*A*

SETTLEMENT—*continued.*

2. RIGHT TO SETTLEMENT—*continued.*

was the owner of a talukh in a zamindari which was purchased by the Government at an auction-sale for arrears of revenue. The Government did not cancel the talukh, but settled it with *A* for twelve years. When the term was expired, the Government refused to make a new lease with *A*, and instead leased it for a year to *B*. *Held* that the refusal of the Government to settle the land with *A* in no way affected his right to a settlement on the expiration of the lease to *B*. AHSANOOLLAH *v.* KRISTO GOBIND DOSS

[2 C. L. R., 592

12. ———— **Owner of parent estate**—*Accretion to estate—Estates separately numbered.*—Certain lands accreted to an estate, No. 667, and were temporarily settled as a separate estate No. 3148. During the currency of this settlement, the owner sold his rights and interests in 667 to the plaintiff, and in 3148 to the defendants. On the expiry of the temporary settlement, the plaintiff, as owner of the parent estate, sued to establish his right to the permanent settlement of 3148. *Held* that the suit would not lie, and that the plaintiff had no claim to have a settlement of 3148. KHUB LAL *v.* GHINA HAZARI . . . 2 B. L. R., A. C., 339

13. ———— **Right to pottah of waste lands**—*Alleged failure to cultivate or pay assessment.*—The plaintiff sued, as the mirasidars of a village, to establish their right to the grant of a pottah of certain waste land of the village which had been granted to some of the defendants. The Collector, who was made a defendant, stated that the hookumnamah rules of the district directed that land should be given to mirasidars on their tendering sufficient security, and that the plaintiffs on previous occasions had received lands for which offers had been made by others in consideration of the plaintiffs' preferential right, but that they had failed to cultivate the lands or pay the assessment in breach of their agreements. *Held* that the plaintiffs were entitled to the relief sought for. COLLECTOR OF MADRAS *v.* RAMANUJA CHARIYAR. KULLAPPA NAIK *v.* RAMANUJA CHARIYAR . . . . . . 4 Mad., 420

14. ———— **Right of ex-lakhirajdar**—*Resumption by Government—Limitation.*—An ex-lakhirajdar whose lands have been resumed by Government under Regulation II of 1819 has no absolute right to a settlement. When a party claims a right to a settlement as being an ex-proprietor, and his claim is rejected, he must, to avoid being barred by limitation, sue within three years for a declaration of his right. [illegible] *v.* [illegible]

[8 B. L. R., 520 note: 13 B. L. R., 110 note
10 W. R., 200

[illegible] . 8 B. L. R., 424

[illegible] . 17 W. R., 145

15. ———— **Right of shikmi talukhdar** [illegible]

SETTLEMENT—*continued.*

2. RIGHT TO SETTLEMENT—*concluded.*

Government, cannot sue for a settlement: they can only claim to have their shikmi rights upheld. GRISH CHUNDER ROY *v.* BOYDONATH DEY

[W. R., 1864, 232

3. EVIDENCE OF SETTLEMENT.

16. ———— **Evidence necessary to establish creation of talukhs**—*Shikmi talukhdars—Registration of tenure.*—The registration of a talukh, or of the sanads creating it, is not absolutely necessary to prove the creation of the talukh before the decennial settlement. The omission of any mention of such a talukh in the decennial or quinquennial settlement, and the inclusion of the lands in the decennial settlement as part of the zamindari for which the jumma is assessed, does not afford any strong inference against the evidence of the talukh being only a shikmi talukh paying rent to the zamindar; the talukhdars were not required to mention it, nor was it necessary for the zamindar to do so. Discussion of the evidence requisite to establish the existence of an old shikmi talukh. WISE *v.* BHOOBUN MOYEE DEBIA

[3 W. R., P. C., 5: 10 Moore's I. A., 165

17. ———— **Evidence of loss of proprietary right**—*Possession of sir land.*—The possession of a share in an estate on settlement may or may not be accompanied by the possession of sir lands; and the fact of a sharer holding no sir land is not of itself sufficient to show that he had lost all proprietary right in the village. TOOLSEE RAM *v.* NATTUZ SINGH . . . . . . 3 N. W., 43

18. ———— **Settlement of noabad talukh in Chittagong**—*Power of Government to make settlement—Waste lands—Resumption—* [illegible] *Effect of—Acceptance of* [illegible] *—Ratification—Rule for the acts of Government officers bind the Government—Reg. III of 1828, s. 5, cl. 1—Reg. VII of 1822* [illegible] *—Evidence—Presumption of due performance of official acts—* [illegible] *after term of settlement.* The plaintiff sued the Secretary of State for India in Council for a declaration that a certain noabad talukh in the district of Chittagong was a permanent talukh, [illegible] by the Government. [illegible] (1) that [illegible] the time of the Decennial Settlement [illegible] [illegible]

SETTLEMENT—*continued.*

3. EVIDENCE OF SETTLEMENT—*concluded.*

proceedings of that year and the variation of rent from time to time did not support the plaintiff's contention. *Held* that the kabuliat of 1836 was merely an offer on the part of the talukhdar for the time being and was not binding *on the Government*, its terms not having been accepted either by the Gov-

having regard to the presumption in favour of the due performance of official acts *Held* also that, even assuming that the officers of the Government induced by their act and conduct a belief in the talukhdar that the kabuliat had been accepted by the Government, or that a permanent settlement had been sanctioned by the Government, that did not amount to a ratification of the kabuliat, inasmuch as such conduct of the officers was in violation of their duty as such officers and in direct contravention of the express orders of the Government. *Held* also that

cence in the terms of the kabuliat. Unsettled and unoccupied *waste land, not being the property of* any private owner, must belong to the State. PROSUNO COOMAR ROY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL . . I. L. R., 26 Calc., 793 [3 C. W. N., 695

4. MODE OF SETTLEMENT.

19. ———— Procedure on making fresh settlement—*Beng. Reg. VII of 1822, s. 14—Refusal to accept new settlement—Time to remove house* —Where the Collector had issued due notice of enhancement under s. 14, Bengal Regulation VII of 1822, of the jumma of lands situate in a town and subject to that Regulation, and the tenant refused to accept a revised settlement, under such circumstances he was held to be entitled to a reasonable time within which to remove a house standing upon the lands in question. RAM CHAND BERA *v.* GOVERNMENT . . . . 6 C. L. R., 365

20. ——— Power of Collector to alter settlement—*Recognition of title by settlement officer—Beng. Reg VII of 1822, s. 20.*—Where the plaintiff's title was recognized by the settlement officer in 1836, who assigned an allowance of 5 per cent. on the Government demand,—*Held* that the Collector had no power in subsequent years during the pendency of this completed settlement to interfere with the arrangement of the settlement officer, except to the extent allowed by s. 20, Regulation VII of 1822. S. 20, Regulation VII of 1822, did not confer on the Collector the power of remodelling the arrangements completed by the settlement officer under s. 10 of the Regulation; nor could the notification of Government extend to revenue officers an authority that the law did not allow to them. HIMMUT SINGH *v.* COLLECTOR OF BIJNOUR [2 Agra, 258

21. ——— Power of Collector to assign lands for cultivation—*Bhagdari tenure.*—*Held* that any interference by the Collector to assign of *his own authority* lands in a bhagdari village to a tenant for cultivation is irregular and unauthorized. RAIJI NAROTTAM *v.* PURUSHOTTAM GIRDHAR [2 Bom., 244 : 2nd Ed., 233

5 SUBJECTS OF SETTLEMENT

22 ———— What passes by settlement —*Right of julkur—Beng Reg XI of 1825, s 4*— A settlement dol includes all that ordinarily passes as

makes settlements. COLLECTOR OF JESSORE *v.* BECKWITH . . . . 5 W R., 175

23. ———— Non mirasi lands left waste by pottahdar—*Claim of former occupant* —Non-mirasi land left waste by a pottahdar may be granted by the Collector, without reference to the claim of *the former occupant.* GENNU REDDI *v.* ASAL REDDI [1 Mad., 13

24. ———— Waste lands—*Lands held on raiyatwari settlement—Raiyat's right of occupation.* —Lands held on the terms of an ordinary raiyatwari settlement, with annual pottah, and left waste by the pottahdar, may be legally granted by the revenue authorities The raiyat has an indefeasible right of occupation only so long as he pays the Government assessment. KUMARADEVA MUDALI *v.* NALLATAMBI REDDI . . 1 Mad., 407

6. EFFECT OF SETTLEMENT.

25 ———— Effect on rights of third parties—*Sanad granted by settlement officers, Effect of—Bom. Act II of 1863.*—Sanads granted by settlement officers under Bombay Act II of 1861 do not prejudice the rights of third persons. PUJU BIN KADAN *v.* MALHARI BIN RAVA [1 Bom., 171

26. ———— Effect on ex maafidar—*Status of maafidar after settlement of resumed maafi.* An ex-maafidar, with whom a sub settlement has been made of the resumed maafi, is presumably not a hereditary cultivator, but his position is that of a proprietor subject to payment of Government revenue. HUMEED-OOL-LAH KHAN *v.* PHAN SOOKH [3 Agra, 280

27. ———— Effect on maafidar—*Settlement with maafidar—Payment of revenue* —Where a plot of maafi land was on resumption settled with the ex maafidar, who engaged for the Government

SETTLEMENT—*continued.*

6. EFFECT OF SETTLEMENT—*continued.*

revenue for the term of settlement, and the settlement was made under s. 5, Regulation XIII of 1825, and paragraph 151, circular order, Sudder Board of Revenue, as provided by s. 5, Regulation XXXI of 1803,—*Held* that they were in possession as owners, and on the expiry of the settlement the mere fact of its having expired would not deprive them of the right of being assessed with revenue as proprietors of maafi land, for where there has been a grant of soil, and possession taken and long continued thereunder, the ownership thereof vests in the grantee, although the grant as to exemption from payment of revenue may be invalid and subject to assessment. TOOLSEE RAM *v.* NARAIN SINGH [3 Agra, 265

28. ———— *Resumed maafi lands, Settlement of—Adverse possession.*—Where owing to the refusal of the original possessor of a resumed maafi land to fulfil the revenue engagements the settlement was made with a stranger,—*Held* that such settlement could not confer upon him any right adverse to the original possessor after the expiration of that settlement, when the original possessor is entitled to claim settlement. MAHOMED ATA-OOL-LAH *v.* MAHOMED MOHIB-OOL-LAH 1 Agra, 231

29. ———— **Liability for rent**—*Beng. Reg. VII of 1822—Holder of resumed lakhiraj.*—The holder of resumed invalid lakhiraj land, within a Government khas mehal, was bound to pay rent according to the settlement of the revenue authorities under Regulation VII of 1822, until he sued in the Civil Court to set aside that settlement, or sued under Act X of 1859 for a mitigation or re-settlement of rent. HURO PERSHAD CHOWDHRY *v.* SHAMA PERSHAD ROY CHOWDHRY 6 W. R., Act X, 107

30. ———— **Lakhirajdar in Assam**—*Holder of resumed grant—Right of ejectment.*—Whatever might have been his position under former Governments, a lakhirajdar in Assam is entitled to manage his lands in any manner he pleases consistently with existing regulations, and, as holder of a resumed grant which has been settled with him, to eject a tenant who has no right of occupancy or lease of any kind. JULLOW SURMA PATWAREE *v.* MADHUB RAM ATOI BOORHA BHUKUT [16 W. R., 202

31. ———— **Effect of resumption and settlement of lakhiraj**—*Invalid lakhiraj.*—Assessment of revenue by Government upon invalid lakhiraj land after resumption does not confer a new estate on the lakhirajdar, and does not cancel or extinguish a mokurari lease granted by the lakhirajdar previously to the settlement and during the time he was in possession of the land as lakhiraj. PRATAB NARAYAN MOOKERJEE *v.* MADHU SUDAN MOOKERJEE . 8 B. L. R., 197 : 16 W. R., 35

32. ———— **Abadkari talukhdar**—*Acceptance of farming leases—Sale of Government right.*—A Government settlement, whether permanent or farming, so far from destroying the rights of a talukhdar, always preserves them if there be really a dependent tenure. Neither the acceptance of farming leases by the talukhdar *qua* farmer, subject to the Government proprietary right, nor the sale of that Government right, in any way, *ipso facto*, extinguishes any talukhdari right existing in the abadkari talukhdar in that capacity, if otherwise valid. HURO PERSHAD BHUTTACHARJEE *v.* BHYRUB CHUNDER MOJOOMDAR . . 8 W. R., 391

33. ———— **Settlement with several persons**—*Presumption as to equality of rights.*—In the settlement of a talukh, after resumption by Government with thirteen persons, it is not to be presumed that all thirteen persons had equal rights, simply because the settlement was made with all of them jointly, particularly where the settlement proceedings show that the question of the extent of the shares was in dispute, and that the settlement was made jointly with the whole without prejudice to title. GOOROO CHURN PODDAR *v.* HAFEEZA BIBEE [7 W. R., 366

34. ———— *Omission to settle boundaries and proportion of assessment which each cultivator ought to pay—Liability to pay revenue individually.*—In a suit against a Collector for an illegal seizure and subsequent usurpation of plaintiff's shares in an Agraharam village for non-payment of trivari due from other tenants of the village and to recover the increased trivari imposed by the Collector,—*Held* that the fact of pottahs having been issued separately to each tenant, stating the share of land occupied, without defining the holding by boundaries and the proportionate amount of assessment which the cultivator is to pay for it, though affording cogent evidence of the distinct liability of each for the amount of trivari stated in his pottah and no more, is not conclusive evidence of such individual liability. ELLAIYA *v.* COLLECTOR OF SALEM . . . . . . 3 Mad., 59

S. C. affirmed on appeal to Privy Council. BRETT *v.* ELLAIYA [12 W. R., P. C., 33 : 13 Moore's I. A., 104

35. ———— **Settlement with talukhdar after his refusal to re-settle at increased rent**—*Waiver of refusal to pay enhanced rent.*—Where, upon a talukhdar's refusal at the end of the period of his settlement to re-settle with Government at an increased rate, the jumma was put up to auction, after which the Government did re-settle with the talukhdar upon the former conditions and the former description of the nature of the talukh, it was held that Government renewed the contract, and placed the talukhdar in exactly the position in which he would have stood had he never refused to pay the increased rent. OGNEE COOMAR ROY *v.* KUMOLA KANT ROY . . . . 11 W. R., 38

36. ———— **Private rights**—*Limitation—Right of action as proprietor.*—Certain land having been settled by Government for a period of ten years, one *S* bought the benefit of that settlement at an auction-sale for arrears of rent, and afterwards sold his rights to one *M*. On the expiration of the temporary settlement, Government effected a permanent zamindari settlement with *M*. In the following year

6. EFFECT OF SETTLEMENT—*concluded*

(1865) the zamindari title was sold, and the purchaser now (1869) sues to recover possession of certain specified land The lower Appellate Court, finding tha[illegible] sion [illegible] filir [illegible] that the question was [illegible] and that the plaintiff did not stand in the position of [illegible]

[illegible] [14 W. R., 170

[illegible] of land by [illegible] court decision [illegible] *Reg. XI of 1825 —Act XXXI of 1858*—*Quære*—Whether a re-settlement of land by the Government as the ruling power, with persons entitled to such settlement under [illegible] I of [illegible] the [illegible] uent [illegible] such land. MODHU SUDAN KUNDU *v.* PROMODA NATH ROY . . . I. L. R., 20 Calc., 732

7. MISCELLANEOUS CASES.

[illegible] Permanent lease made by [illegible] cannot afterwards turn round upon the lessee and plead that he had no power to grant a permanent lease, on the ground that the settlement with him was temporary, and not permanent. AMEER ALI *v.* AMEEROONISSA BEGUM . . . 11 W. R., 11

39. ——— Landlord and tenant—*Effect of settlement proceedings*—A land owner, seeking to bind his tenants by the settlement proceedings, should show distinctly that they were parties to the enquiry held by the Collector into the nature and extent of their holdings. ALI AHMED *v.* DOORGA ROY [23 W. R., 455

40. ——— Right of tenants to deduction for cost of collection—*Beng. Reg. VII of 1822, s. 9.*—Where tenants who were aymadars voluntarily signed a jummabundi drawn up under Regulation VII of 1822, s. 9, specifying the amounts of rent payable by them to the Government farmers with whom the settlement was made,—*Held* that the tenants were not entitled to a deduction from such specified rents on account of costs of collection. WATSON & CO. *v.* MOHENDRO NATH PAUL [23 W. R., 433

7. MISCELLANEOUS CASES—*concluded.*

[illegible] [3 B. L. R., Ap., 82: 12 W. R., 6

42. ——— Settlement of a Government [illegible] a Government khas mehal can only be enhanced by the same process as the rent on any private estate. AKSHAYA KUMAR DUTT *v.* SHAMA CHARAN PATITANDA . . . . I. L. R., 16 Calc., 586

8. EXPIRATION OF SETTLEMENT.

[illegible] has, by mistake, granted such a sanad to a person not the owner of the land, reform or set aside the sanad. S. 7 of Bombay Act VII of 1863 renders the quit rent, fixed by the sanad, binding alike on Government and on the rightful owner of the land, but the latter may recover the land from the grantee of the sanad, subject to the quit-rent, fixed by the sanad, payable to Government; and such grantee will be declared to have taken the sanad as a trustee for the rightful owner. Where Government had granted seven sanads to certain garasis in respect of lands, part of which had been previously sold by the garasis and Government had attempted to revoke and cancel those sanads, and had subjected the lands to a full assessment on the ground that the garasis were not entitled to any of the said lands and that the sanads had been granted by mistake,—*Held* that such attempted revocation, cancellation, and re-assessment were void and of no effect, and that the grantees were entitled to hold the lands on the terms mentioned in the sanads, but, so far as regarded the sold portion of the said lands, in trust for the vendees thereof and their heirs, representatives, and assigns. *Quære*—Whether a Civil Court can give relief, either by

SETTLEMENT—*concluded.*

8. EXPIRATION OF SETTLEMENT—*concluded.*

reforming or cancelling such sanads against mistakes, other than those relating to ownership, which may be found to exist in the sanads. DALSANG BHAVSANG *v.* COLLECTOR OF KAIRA [I. L. R., 4 Bom., 367

44. ——— Liability to ejectment—*Dependent talukhdars.*—Dependent talukhdars re-admitted to temporary settlements for a certain number of years are not liable to ejectment at the close of those settlements. HUROGOBINDO DOSS *v.* KALA CHAND SHAHA . . . 6 W. R., Act X, 26

45. ——— Dispossession — *Dependent talukhdars—Cause of action.*—When a dependent talukhdar, holding under a temporary settlement, has that settlement placed in abeyance by the Collector taking the collections into his own hands khas, the Collector's act is not one of dispossession from which limitation can count, but limitation will reckon from the date when the purchaser, at a sale after the Collector had ceased to hold khas, had himself made collections, and so created cause of action by dispossession of the former talukh. MYENOODDEEN *v.* RAMMONEE CHOWDHRAIN . . . . 7 W. R., 182

46. ——— Shikmi talukhdari right—*Payment in lieu of shikmi talukhdari right.*—Where a shikmi talukhdar accepted from Government a pottah which admitted him to be a person having a right to a settlement and gave him as a separate and distinct allowance under the head of expenses (in addition to the usual allowance for collections, etc.) the allowance which had, under the previous settlement, been made to him under the head of malikana, —*Held* that, if he had notice and accepted the payment because he knew that his right as malik of the shikmi talukh was no longer recognized, then the shikmi talukhdari right came to an end at that time. MAINOODDEEN *v.* NUBO COOMAREE DEBIA [24 W. R., 247

SETTLEMENT AWARD.

See CASES UNDER ACT XIII OF 1848.

SETTLEMENT OFFICER.

See LIMITATION ACT, 1877, ART. 130 (1871, ART. 130) . I. L. R., 1 Bom., 586

See MADRAS FOREST ACT, s. 4. [I. L. R., 17 Mad., 193

See PUBLIC OFFICER. [I. L. R., 14 Bom., 395

See SERVICE TENURE. [I. L. R., 1 Bom., 586

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION . I. L. R., 18 Calc., 146

——— Act or order of—

See BENGAL TENANCY ACT, s. 104. [I. L. R., 20 Calc., 579
I. L. R., 23 Calc., 257

SETTLEMENT OFFICER—*continued.*

See DECREE—CONSTRUCTION OF DECREE—HINDU WIDOW I. L. R., 17 Calc., 246

See KHOTI SETTLEMENT ACT, ss. 20 AND 21 . . I. L. R., 18 Bom., 244

See LANDLORD AND TENANT—CONSTITUTION OF RELATION—GENERALLY. [I. L. R., 16 All., 209

See LIMITATION ACT, 1877, ART. 14. [I. L. R., 18 Bom., 244

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 23 Calc., 257

——— Application to—

See GUJARAT TALUKHDARS ACT, s. 10. [I. L. R., 16 Bom., 408

——— Decision of—

See ARBITRATION—ARBITRATION UNDER SPECIAL ACTS—N.-W. P. LAND REVENUE ACT, . I. L. R., 18 All., 172

See CASES UNDER KHOTI SETTLEMENT ACT, ss. 17 AND 20.

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622. [I. L. R., 21 Calc., 935

——— Entry in record of—

See CASES UNDER KHOTI SETTLEMENT ACT, s. 17.

——— Order on appeal from—

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I. L. R., 16 Calc., 596
I. L. R., 16 Bom., 408
I. L. R., 21 Calc., 776, 935
I. L. R., 22 Calc., 477
I. L. R., 24 Calc., 462
I. L. R., 25 Calc., 146

——— Power of—

See BENGAL TENANCY ACT, ss. 101—115. [I. L. R., 20 Calc., 577
I. L. R., 21 Calc., 378
I. L. R., 27 Calc., 364

See BENGAL TENANCY ACT, s. 102. [I. L. R., 21 Calc., 38
I. L. R., 22 Calc., 244

See BENGAL TENANCY ACT, s. 103. [I. L. R., 19 Calc., 641, 643

——— Statement of facts by—

See EVIDENCE ACT, 1872, s. 35. [I. L. R., 21 Bom., 695

——— Suit to set aside order of—

See SONTHAL PERGUNNAHS SETTLEMENT REGULATION I. L. R., 13 Calc., 245
[I. L. R., 15 Calc., 765
I. L. R., 18 Calc., 146

SETTLEMENT OFFICER—*continued.*

[L. R., 14 I. A., 127

2. ———— Power of settlement officer —*Question of payment and right to possession between mortgagor and usufructuary mortgagee* — The duty of the settlement officer is to record the

gagee in a usufructuary mortgage is entitled to possession by reason of the satisfaction of the debt out of the usufruct. BHYRO RAI *v.* GOLAB SINGH [3 Agra, 303

3. ———— *Powers of, in making entry in jummabundi* —A settlement officer is bound to record in the jummabundi the existing rights of cultivators, and cannot impose an enhanced rent without notice on those entitled. If he enters a higher rate in spite of protest, such entry does not conclude the tenant from pleading non liability. LESLIE *v.* DOORGA MONEE DOSSEE WATSON & Co. *v.* DOORGA MONEE DOSSEE . 21 W. R., 410

4. ———— *Act XIV of 1863 —Application under Act X of 1859, s. 28* —The powers which the Government was authorized by Act

ment officer. THAKOORKE *v.* DHULEEP SINGH [2 N. W., 261

5. ———— *Act XIV of 1863, s. 8—Resumption and assessment* —The powers given by s. 8 of Act XIV of 1863 to a settlement officer, for the decision of suits of the nature mentioned in s. 23 of Act X of 1859, or in Act XIV of 1863, did not give him power to try a right to resume and assess. JEYCHUND *v.* KADHOREE [3 N. W., 244: Agra, F. B., Ed. 1874, 223

6. ———— *Power to refer case to another officer for trial—Act X of 1859, s. 150—Act XIV of 1863, ss. 8 and 10* —An officer employed in making or revising settlements of land revenue and invested by the local Government with the powers described in s. 8, Act XIV of 1863, was not thereby empowered to refer a suit, which he had jurisdiction to try by virtue of the provisions of the abovementioned section, to another officer for trial. The powers in s. 8 of Act XIV of 1863 were the powers spoken of in s. 150 of Act X of 1859, and were distinct from the powers given to a Collector by

SETTLEMENT OFFICER—*concluded.*

the second clause of s. 162. S. 10 of Act XIV of 1863 enacted that, if a suit for enhancement of rent

[5 N. W., 64

the raiyats before they can be held to be bound by it. RHAZOODDEEN MAHOMED *v.* MCALPINE [22 W. R., 540

8. ———— *Power of, in Son-*

valid reference can be made in a settlement case in the Sonthal Pergunnahs by a settlement officer. TARINI PROSAD MISSER *v.* MAHAMMAD CHOWDHRY [6 C. L. R., 555

SHAREHOLDER.

———— Liability of—

See CASES UNDER COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS

———— Right of—

See COMPANY—MEETINGS AND VOTING [I. L. R., 15 Bom., 164

See COMPANY—RIGHTS OF SHAREHOLDERS [I. L. R., 19 Bom., 1
L. R., 21 I. A., 139

SHARE WARRANTS.

———— Stamp on—

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—COMPANIES ACT [I. L. R., 20 Calc., 676

SHARES.

See CASES UNDER COMPANY

———— Agreement relating to sale of—

See STAMP ACT, 1879, SCH. I, ART. 5. [I. L. R., 13 Mad., 255
I. L. R., 14 Bom., 310

———— Assignment of—

See INSOLVENCY—ORDER AND DISPOSITION. [I. L. R., 2 Bom., 543

———— Cancellation of—

See COMPANY—POWERS, DUTIES, AND LIABILITIES OF DIRECTORS. [I. L. R., 20 Bom., 654

SHARES—*continued.*

———— "Holding shares," Meaning of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.

[I. L. R., 17 Bom., 197

———— Sale of—

See CONTRACT—CONTRACTS FOR GOVERNMENT SECURITIES OR SHARES.

[2 Bom., 260, 267, 272; 2nd Ed., 246, 253, 258
3 Bom., O. C., 9, 69, 79
1 Ind. Jur., N. S., 17

———— Transfer of—

See CASES UNDER COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES.

———— Transfer of, Registration of—

See BANK OF BENGAL.

[I. L. R., 3 Calc., 392

1. ———— Transfer of shares—*Blank transfer—Cause of action.*—Shares in the National Bank were sold by the allottee, and a transfer in the form required by the articles of association of the Bank was executed, but no name was inserted as transferee. The purchaser pledged them with the I. P. L. and China Bank, and deposited with them the blank transfer. This Bank applied to the National Bank without producing a letter from the pledgor to register their lien, and on its refusal sold the shares to the plaintiff and delivered to him the transfer, also in blank. The plaintiff inserted his own name in the transfer, and requested the National Bank to register the shares in his name. In an action against the National Bank to recover the price of the shares,—*Held* also that they were justified in refusing to register. *Held* also that the plaintiff, having received back from his vendors the price of his shares, had no cause of action. KNOWLES *v.* NATIONAL BANK OF INDIA 2 B. L. R., O. C., 158

2. ———— *Transfer by way of pledge—Right of transferee to have transfer registered and to have dividends.*—*A* and *B*, proprietors of indigo factories, sold them to the *E B Company*, receiving in part payment 1,000 fully paid-up shares of the company, which was a company registered under Act XIX of 1857, *A* and *B* covenanting to indemnify the company from all loss and to guarantee a dividend of 8 per cent. for the term of two years. *A*, being indebted to *C*, deposited the shares with him as a security for the debt. *C* gave notice of this to the company before he made the advance to *A*, and the company assented to the deposit. *A* and *B* afterwards became jointly indebted to the company in respect of the covenant and guarantee. *Held* that *C* was entitled to have the deposit of the shares registered in the books of the company, and to be paid dividends upon them. PIETSCH *v.* EASTERN BENGAL INDIGO COMPANY

[1 Ind. Jur., N. S., 278

But where the deposit by *A* was accompanied by a contract with a power of sale of the shares, but nothing was said about receiving the dividend,—*Held* tha , under this contract of *A*, *C* could not receive

SHARES—*continued.*

the dividend, though he could under a contemporaneous general power of attorney from *A*. ROYAL BANK OF INDIA *v.* EASTERN BENGAL INDIGO COMPANY . . . 1 Ind. Jur., N. S., 281

3. ———— *Blank transfers—Tenders.*—On the 19th April plaintiff sold to defendants sixty shares in the N Bank, to be delivered and paid for on Thursday, April 26th. The sold note was as follow: "Baboo Lall Mohun Mullick. Sold by your order, and on your account, to Messrs. Peary Chand Mittra and Sons (Metcalfe Hall) sixty shares in the N Bank at R4 premium per share. (Signed) Sree Coomar Sircar, Broker." The bought note exactly corresponded. On the 23rd April plaintiff received from defendants the following: "With reference to the sixty N Bank shares sold by you, we shall thank you to send us three transfer deeds on Friday next, *viz.*, two for twenty-five shares each and one for ten shares." On the 26th April plaintiff sent to defendants sixty N Bank shares, some standing in the name of *H* and some in the name of *P*, accompanied by transfers, all executed by *P* alone. These shares were all returned by the defendants, with the following memorandum: "The accompanying shares in the N Bank purchased for delivery to-day are not in order." Later on the same day, the 26th, plaintiff took personally to defendants the same sixty shares with transfers, executed some by *H* and some by *P*, the name of the transferor corresponding number by number with the name in the shares. On this, as on the previous occasion, the name of the transferee was left blank. These shares were also rejected by the defendants as not in order. Plaintiff then, on April 27th, about 1 P.M., had the shares registered in his own name, and, within two hours afterwards, sent them to the defendants with corresponding transfers, and with the following letter: "In compliance with request in your memorandum of the 23rd instant, I now send you the sixty shares N Bank, with three transfer deeds, and will feel obliged by your paying the amount to the bearer." The defendants declined to receive the shares, and they were re-sold at a loss. The plaintiff never had any personal interest whatever in the shares, either on the 26th or 27th April, and was a mere benami holder for *H* and *P*. The articles of association of the N Bank required transfers to be in the form F appended to Act XIX of 1857. The transfers tendered by plaintiff were on each occasion in that form. The defendants swore that the "Friday, the 27th April, mentioned in their memorandum of the 23rd April, was inserted by accident, instead of Thursday," the 26th April, and that they consequently rejected the tender on the 27th. *Held* (1) that the contract, as it stood on the bought and sold notes, was a contract by the vendor (as in *Stephen* v. *De Medina*) that "in consideration of such a sum I will execute any proper conveyance which you tender me." (2) That the memorandum of April 23rd, coupled with the fact of the vendor having made tenders of transfers of the shares, was evidence enough to show that the vendor bound himself to tender a proper conveyance to his vendees. (3) That the document of conveyance must be complete at the

SHARES—*concluded.*

time of tender, or capable of being then made complete. (4) The transfers, with a blank for the name of the transferee, were incomplete and insufficient, the vendor showing no authority from *H* and *P*. (5) That the Court below must deal with the question of fact, whether or no the mention of Friday, the 27th, instead of Thursday, the 26th, was a mistake; and *semble* that, if the defendants had received the blank transfers and acted upon them, the waiver would have rendered them complete. LALL MOHUN MULLICK *v.* PEARY CHAND MITTER [1 Ind. Jur., N. S., 383

4. ——— **Sale of shares for future delivery**—*Refusal of purchaser to accept—Readiness and willingness to deliver—Pledge of shares to third person.*—Where a contract is made for the future delivery of shares, and the purchaser, before the delivery day, gives notice to the vendor that he (the purchaser) will not accept the shares, the vendor is thereby exonerated from giving proof of his readiness and willingness to deliver the shares. *Semble*—The mere fact that such shares are pledged to a third person is not sufficient to show that the vendor is not ready and willing to deliver them, if there is nothing to show that the pledgee is not willing to assist the vendor in carrying out his contract, and it being apparently for the advantage of the pledgee that he should do so. DAYABHAI DIPCHAND *v.* MANIKLAL VRIJBHUKAN 8 Bom., A. C., 123

5. ——— *Equitable assignment of right to sue—Readiness and willingness to deliver—Tender—Constructive tender.*—A contract for the delivery of shares at a future day is a contract that can be assigned in equity, and the assignee of such a contract can, in his own name, main- [illegible] deliver, an actual tender is not in all cases necessary, *e.g.*, a tender will be dispensed with where the defendant has refused to perform the contract, or where, on [illegible] absconded, [illegible] has left [illegible] DAYABHAI [illegible] [8 Bom., A. C., 133

SHEBAIT.

See CASES UNDER HINDU LAW—ENDOWMENT.

SHERIFF.

——— **Liability of—**

See ESCAPE FROM CUSTODY. [6 Moore's I. A., 407

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . . I. L. R., 2 Bom., 258

SHERIFF—*continued.*

——— **Sale by, under writ of fieri facias.**

See HIGH COURT, JURISDICTION OF — CALCUTTA—CIVIL . 24 W. R., 366 [8 C. L. R., 4

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS — RECOVERY OF PURCHASE-MONEY . . I. L. R., 1 Calc., 55 [I. L. R., 3 Calc., 806 L. R., 5 I. A., 116 I. L. R., 6 Calc., 356

1. ——— **Right of poundage**—*Satisfaction of decree after attachment, but before sale.*—Certain immoveable property of the defendant was attached in execution of a decree which had been partly satisfied by the proceeds of a previous sale in execution. Before any proceedings for sale were taken under the attachment, the defendant paid the balance and satisfied the plaintiff's claim in full. *Held* that the Sheriff was entitled to poundage upon the amount so paid in satisfaction of the debt, and satisfaction of the decree was ordered to be entered, and the attachment withdrawn, subject to the payment of such poundage. ROYCHURN DUTT *v.* AMEENA BIBI . . I. L. R., 2 Calc., 385

PEARSON *v.* MADHUB CHUNDER GHOSE [I. L. R., 2 Calc., 387 note

2. ——— *"Debt levied by execution"* — *Ambiguity in document — Usage — Discharge of defendant, Effect of, on Sheriff's right.*—In a suit brought in the Bombay Court of Small Causes to recover Sheriff's poundage on the amount endorsed on a warrant of arrest in execution of a decree obtained by the defendants, and under which the plaintiff, at the request of the defendants, arrested *H*, who applied to the High Court under s. 273 of Act VIII of 1859, and was ordered to be discharged from custody, the Judge found for the defendants with costs, subject to the opinion of the High Court. *Held* (1) that the words "debt levied by execution" used in the table of fees for the Recorder's Court, and continued in the subsequent tables, being ambiguous, the rule applies that "if an instrument be an ancient one and its meaning doubtful, the acts of its author may be given in evidence, in aid of its construction;" (2) that as the Sheriff is the officer of the Court, and his fees are received under its authority, it was unnecessary to refer the case back to the Small Cause Court in order that evi- [illegible]

VASUDEV *v.* RITCHIE, STEUART & CO. [4 Bom., O. C., 139

SHERIFF—*concluded.*

3. ———— *Compromise after attachment of property and before sale.*—Where property is attached by the Sheriff after judgment. and the parties come to a compromise before the Sheriff sells any of such property, the Sheriff is only entitled to poundage on the amount received by the execution creditor in compromise of his claim. IN THE MATTER OF BOMBAY JOINT STOCK CORPORATION. IN RE SHERIFF OF BOMBAY

[6 Bom., O. C., 22

4. ———— *Sale by Sheriff—Civil Procedure Code (Act XIV of 1882), s. 244, cl. (c), ss. 287, 311, 313—Belchamber's Rules and Orders of High Court, Calcutta 382—386—Deficiency in area of land—Application by purchaser to set aside sale or for compensation.*—A purchaser at an execution sale of immoveable property held by the Sheriff applied to set aside the sale or for compensation on the ground of deficiency in the area of the land sold. *Held* that such an application in relation to sales held by the Sheriff was not sanctioned by any provisions of the Civil Procedure Code, and s. 313 did not apply. *Held* also that, as the interest of the purchaser was adverse to the interest of the judgment-debtor, the former was not the representative in interest of the latter, and therefore s. 244 of the Civil Procedure Code did not apply. *Ishan Chunder Sirkar* v. *Beni Madhub Sirkar, I. L. R., 24 Calc., 62,* applied. Sales by the Sheriff differ from sales by the Registrar of the Original Side of the High Court. The rules of the Court governing sales by the Registrar direct that compensation shall be allowed for errors and misstatements, if capable of compensation, while no such condition is imposed on sales by the Sheriff. RAM NARAIN *v.* DWARKA NATH KHETTRY . . I. L. R., 27 Calc., 264

[4 C. W. N., 13

SHIKMI TALUKHDARS.

See SETTLEMENT—EVIDENCE OF SETTLEMENT.

[3 W. R., P. C., 5 : 10 Moore's I. A., 185

See SETTLEMENT—RIGHT TO SETTLEMENT.

[W. R., 1864, 262

SHIP.

———— at anchor, Duty of—

See SHIPPING LAW—COLLISION.

[I. L. R., 24 Calc., 627
L. R., 24 I. A., 129

———— Loss of—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 13 Bom., 15

[I. L. R., 22 Bom., 189

———— Measurement of—

See MERCHANT SHIPPING ACT, ss. 24, 26.

[I. L. R., 14 Bom., 170

SHIP—*concluded.*

———— Seaworthiness of—

See BILL OF LADING . 8 W. R., 35

[I. L. R., 13 Bom., 571
I. L. R., 19 Bom., 639

See CONTRACT—CONDITIONS PRECEDENT.

[2 B. L. R., O. C., 127

See INSURANCE—MARINE INSURANCE.

[5 Moore's I. A., 361
Cor., 5 : 2 Hyde, 107

SHIP, ARREST OF—

See ARREST—CIVIL ARREST.

[1 Hyde, 253

See COSTS—SPECIAL CASES—ADMIRALTY OR VICE-ADMIRALTY.

[I. L. R., 17 Calc., 84

See SALVAGE . I. L. R., 17 Calc., 84

———— Deposit of security with Marshal—*Application for arrest of deposit in another action—Admiralty Court, Practice of.*—The ship *M*, having been arrested in an action promoted by the master of the ship *N* for damage caused by a collision, in which the *N* with her cargo was totally lost, deposited with the Marshal of the Court certain Government paper as security to answer the alleged damage, on which the *M* was released. The cargo of the *N* had been insured, and on the loss thereof the Insurance Company paid the amount of the policy, and instituted proceedings against the *M* in respect of the loss of the cargo. *Held* the Court had no power to grant an application by the Insurance Company for the arrest of the security in the hands of the Marshal, so as to make it answerable in their action. TRITON INSURANCE COMPANY *v.* "MOORHILL." IN RE "MOORHILL"

[15 B. L. R., Ap., 3

SHIP, REGISTERING OF—

———— British ship—*Stat. 3 & 4 Vict., c. 56—Act X of 1841—Ship built in foreign port.*—A ship built in a foreign port in India in 1817, within the limits of the Company's charter, by foreigners, and which sailed under foreign flags until 1838, when it was then and thereafter owned by and belonged to British subjects, resident at Bombay, held to be entitled, under the proclamation of the Governor General in Council under 3 & 4 Vict., c. 56, and the Act X of 1841 of the Legislative Council of India, to be registered at Bombay as a British ship, for the purpose of trade within the limits of the Company's charter. CRAWFORD *v.* SPOONER

[4 Moore's I. A., 179

SHIP, SALE OF—

See BOTTOMRY BOND . 5 B. L. R., 258

[6 B. L. R., 323

1. ———— Sale in execution of decree—*Form of transfer—Merchant Shipping Act, s. 55*

SHIP, SALE OF—*continued*

— *Mandamus to Registrar to register transfer*—

where a ship sold in execution was transferred by the Clerk of the Court, in a form usual in sales in execution, but quite irregular, having reference to the Merchant Shipping Acts, the Court refused a mandamus to order the Registrar to register the transfer. *Quære*—Whether a ship can be sold in execution of a decree of the Calcutta Small Cause Court, and *quære* whether the Clerk of the Small Cause Court can execute a transfer of a ship, supposing she is saleable, in execution of that Court's decree IN THE MATTER OF THE SHIP 'SHAH CALLANDER" . . 1 Ind. Jur., N. S, 263

2. ———— *Merchant Ship-*

accidental causes. The plaintiff sued to recover the balance of the purchase-money. *Held* that the plaintiff was not entitled to recover. RAMANADAN CHETTI *v* NAGOODA MARACAYAR [I. L. R., 21 Mad, 395

3. ———— *Contract between British subject and non-British subject as to registered ship in Calcutta—Merchant Shipping Acts, ss. 53, 55—Jurisdiction of Small Cause Court—Execution of Small Cause Court decree—Form of transfer to purchaser*—*A*, not a British subject, contracted with *B*, a British subject, for the purchase of a ship which was registered in the port of Calcutta in the name of *C* (also a British subject). *A* and *B* *entered into the contract as if both had been British* subjects. *Held* that, on the evidence, the parties contracted with reference to the Merchant Shipping Act, and that the intention was that a title under that Act should be given *Held* also that, although it turned out that *A*'s nationality prevented the *possibility of his being registered as owner*, this did not affect the liability taken upon himself by *B* to have himself put on the register as owner, or his liability to put *A* in a position to have a change of ownership noted in the register under s. 53 of the Merchant Shipping Act. *Held* further that *B* not having had himself put on the register as owner, and not having put *A* in a position to have a change of ownership noted under s. 53, and *B* having declined *to take any further steps towards attaining either of* these objects, *A* was entitled, although he had got possession of the ship, to rescind the contract, and to recover back a part of the purchase-money which he had paid, and also to recover damages for the breach of contract. The Calcutta Court of Small Causes had power to seize and sell a vessel in execution of a decree of that Court, and the bailiff who sells the vessel is the person who ought to execute the bill

SHIP, SALE OF—*concluded.*

not pass a title to him ESAU AHMED *v* JASSIM BINSAFF . . 2 Ind. Jur., N. S, 251

SHIPMENT.

———— Contract for—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 12 Bom, 50
[I. L. R, 13 Bom, 15
I. L. R., 16 Bom, 369
I. L. R., 17 Bom., 129
I. L. R., 18 Bom, 299
I. L. R, 22 Bom, 189
I. L. R., 18 Mad., 63

See SALE OF GOODS.
[I. L. R., 17 Bom., 62

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—DAMAGES FOR BREACH OF CONTRACT
[I. L. R., 19 Mad., 304

———— Meaning of—

See CONTRACT—CONSTRUCTION OF CONTRACTS I. L. R, 17 Bom., 129

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I. L. R., 17 Bom., 129

SHIPMENTS.

1. ———— Consignment of goods—*Bills of exchange—Presumption of payment of—Sale of goods*—The plaintiffs in London and the defendant in Calcutta had dealings, which consisted in the defendant shipping jute cuttings and rejections to the plaintiffs in certain quantities, and within certain limits as to price the defendant drawing bills on the

goods on their own account, or treat them as consignments on account of the defendant, but the defendant denied there was any such arrangement. The defendant made several shipments in excess of the plaintiff's

refused to pay. In an action brought by the plaintiffs for the balance due to them from the defendant in respect of the shipments which had been treated by the plaintiffs as consignments in the defendant's

SHIPMENTS—*concluded.*

account, the defendant admitted he had sold the bills and received the money for them; they were produced by the plaintiffs, the acceptors. *Held* that the bills being produced by the acceptors after due date, and the defendant having received a notice of dishonour, and no demand for payment of the bills, the presumption was that they had been paid by the plaintiffs. In exercising their option of treating shipments in excess of their limits as on their own account or as consignments on account of the defendant, the plaintiffs were entitled to treat each shipment separately, and were not compelled to decide on an average of the shipments taken all together. SHEARMAN *v.* FLEMING . . 5 B. L. R., 619

2. ———— *Bills of lading fraudulently signed—Title of endorsees for value against holder of mate's receipts who has not paid.*—The plaintiffs agreed with the defendant *K M* to purchase and ship cotton on account of *K M* and to retain the mate's receipts for the cotton so shipped until the purchase-money should be paid by *K M*. Under this agreement the plaintiffs shipped 609 bales on board the *Teresa*. Before the greater part of the 609 bales had been shipped, and before paying for the same, *K M*, without production of the mate's receipts, induced the master of the ship to sign bills of lading for the said 609 bales, and endorsed over the bills of lading for 310 of such bales to *J C & Co., bonâ fide* endorsees for value without notice. In a contest between the plaintiffs, holders of the mate's receipts and *J C & Co.*, endorsees for value of the bills of lading of the said 310 bales, it was held that the plaintiffs were entitled to the possession of the 310 bales to the exclusion of *J C & Co.* RAJARAM GOVINDRAM *v.* BROWN . . 7 Bom., O. C., 97

SHIPPING LAW.

1. ———— Certificates—*Suspension or cancelment of certificate—Act I of 1859, ss. 201, 202.*—The local tribunal in India, appointed under ss. 201 and 202 of Act I of 1859, can suspend or cancel the British certificate of a master or mate, and for that purpose its report need not be confirmed by the local Government. EX-PARTE HURST. IN THE MATTER OF STEAMSHIP "JASON" . . 1 Mad., 270

2. ———— Collision—*Collision in port—Port Rules, 1856—Liability of ship for damage.*—The ship *T* having got adrift in a dark night, in consequence of a collision, the harbour-master tried to anchor her, but failing to do so, as her cable jammed, finally brought her up inside the ship *A*, which was moored off the Howrah side of the Hooghly, this being the only berth the *T* could then secure. The next flood swung both ships, and the *T* fouled the *A*, damaging her, and causing her to part her cables, in consequence of which she suffered further damage from subsequent collisions. The owners of the *A* sued the *T* for the whole damage done. The defence was that the promovents, by adopting certain precautions, might have prevented the accident; that the *T*, being in charge of the port authorities, was not liable, and that no care or skill on her part could have prevented the accident. The *T* did not allege a liability

SHIPPING LAW—*continued.*

of any of the vessels subsequently collided with. *He[ld]* that liability for damages occasioned by collisi[on] rests, *primâ facie*, on the colliding vessel. Tha[t a] ship in port is bound to be prepared for such exige[n]cies only as might be expected to arise from the c[ir]cumstances she knew to surround her, that is, a sh[ip] is protected by the port rules from liability for da[m]age only when it is due to the acts or omissions of t[he] officials in charge of her. *Held* also that the ship [is] liable for all the consequences occasioned by [an] accident that results from any defect in her equi[p]ment, or want of care or skill of her crew, etc. [IN] THE MATTER OF THE "THALATTA" Bourke, Ad.,

Held on appeal that an accident to the gear of [a] ship does not of itself alone render her liable f[or] damages for a collision of which it is a remote occ[a]sion; and that a ship at anchor in the port shou[ld] keep a look-out, and be ready to take all reasonab[le] means for her own safety in an emergenc[y]. "THALATTA" *v.* "ANNE" . Bourke, A. O. C., 8

3. ———— *Liability of sh[ip] for fault of pilot—Port Rules, 1856—Act XXII [of] 1855.*—The ship *H*, in charge of a pilot (acting [as] harbour-master), when proceeding across the bow [of] the ship *I S*, which was at anchor, to take up a cle[ar] mooring, came into collision with and slightly dam[]aged her, and this suit was for the damage so occa[]sioned. Both sides relied on Act XXII of 1855 an[d] the Port Rules of 1856, the plaintiff contending tha[t] the officer in charge was not such officer as the sai[d] Act and Rules referred to; and the defendant that h[e] was. The suit was dismissed with costs. *Held* tha[t] a ship is *primâ facie* liable for damages occasione[d] by a collision resulting from an error in judgment o[f] the officer in charge of her. *Held* also that a vesse[l] is exempted from liability for the fault of a pilot i[n] charge of her,—first, where a master is authorized t[o] employ a pilot, and is exempted from responsibility i[f] he elects to do so; and, secondly, where the employ[]ment of a pilot is compulsory, and the owners of th[e] vessel so employing him are relieved from responsibi[li]ty for his misconduct; that the legislation regarding the employment of pilots and other officers in the por[t] of Calcutta is contained in Act XXII of 1855 and the Port Rules of 1856; that where no special requisition is made by the port authorities, under rules 2 and 7, a ship may move at her discretion in the port; and that it is unlawful, under s. 12 of Act XXII of 1855, to moor a vessel in the port without having a port officer on board to take command of the ship. IN THE MATTER OF THE "HANOVER" . Bourke, Ad., 15

4. ———— *Collision from bore in the river—Inevitable accident.*—The ship *Thames* was lying a mere hulk, waiting for repair when a bore drifted her stern foremost up the river, and she came into collision with another ship. No negligence was proved against the master, and the accident was held to be inevitable, and no costs were decreed on either side. ABDOOLA ROHOMAN MOOSAN *v.* "THAMES" . . . Bourke, Ad., 21

5. ———— *Moving vessel in harbour—Act XXII of 1855—Negligence of pilots—Bombay Harbour Rules—Lights on vessels, Duty to carry or show.*—The taking of a steam-vessel in a

SHIPPING LAW—*continued.*

trial trip from Mazagon to the sea and back again is a moving of such vessel within the meaning of s. 12 of Act XXII of 1855. For such a trip, therefore, the employment of a pilot is compulsory. Where the

the accident was that of ...

is partly that of the master or crew and partly that of the pilot, the owners are not exempted from liability. If it be proved on the part of the owners that the pilot was in fault, and there is no sufficient

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may, under particular circumstances, become their duty to carry or show a light. Although that is

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other vessels are approaching her, and in sufficient time to enable them to avoid her. MUHAMMAD YUSUF *v.* PENINSULAR AND ORIENTAL STEAM NAVIGATION COMPANY . . 6 Bom., O. C., 98

6. ——— *Admiralty suit—Both vessels to blame—Suit for damages by owners of cargo—Costs.*—The owners of cargo on board the *H* sued the owners of the steam ship *S* for damages resulting from a collision which occurred between the *H* and the *S.* The Court found that both vessels were to blame for the collision. *Held,* following the English authorities, that the plaintiffs could only recover from the defendants half of the damages which they had sustained. *Held* also, following the *City of Manchester, 5 P. D., 221,* that in such suit each party should bear their own costs. OOKERDA POONSEY *v.* STEAM SHIP "SAVITRI"

[I. L. R., 10 Bom., 408

7. ——— *Damage by ship under way colliding with another at anchor—Burden of justifying—Duty of ship at anchor.*—Where a ship under way comes into collision with another at anchor in a proper place, and showing at night an anchor light, it is obvious that the burden of justifying is heavily cast on the ship under way. At the same time there is an obligation on the anchored ship to keep a competent watch, to show an anchor light, and to do everything to avert a collision and lessen the damage from it. If, as was the case here, the damaged ship is placed in a difficulty entirely by the erroneous course or conduct of

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anchor in a proper place, and showing an anchor light. Near the tug was a pilot brig astern of which the steam-ship wanted to round, attempting to pass between the tug and the brig. She could, however,

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was held to be no excuse for the colliding ship, as against the tug's complaint. The main charge against the tug was that she did not slack away chain as soon as there was danger, but hove on her anchor. It was found, however, that if the tug were already drifting when the collision took place, there *was no reason to suppose that by slacking away chain* at the earliest possible moment the collision would have been averted or lessened in force. On the other hand, the facts against the impugnants' steam-ship were (1) that her course could, without difficulty, have been directed so that by going astern of the tug from the port side instead of crossing her bows, all risk of collision would have been avoided; (2) that

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MARY TUG CO. *v.* BRITISH INDIA STEAM NAVIGATION CO. . . . I. L. R., 21 Calc., 627
[L. R., 21 I. A., 120
1 C. W. N., 329

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butors, originating in the actual presence of a common danger, not in the causes of it, are mutually perfected whenever the goods of some of the shippers (not being wrong-doers, or those responsible for the latter) have been advisedly sacrificed, and the property of others has been thereby preserved. Such

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stranded owing to the negligence of her master, and thereby ship and cargo were placed in a position of such danger as to make it necessary to jettison part

SHIPPING LAW—*continued.*

of the cargo in order to save the remainder and the ship,—*Held* that innocent owners of the jettisoned cargo were entitled to general average contribution; but that the owners of the ship were not entitled (their legal relations to the shippers not having been varied by contract). The rules of Maritime Law as to the rights and remedies in a case of jettison are: first, each owner of jettisoned goods becomes a creditor of the ship and cargo saved; and second, he has a direct claim against each of the owners of the ship and cargo, for a *pro rata* contribution towards his indemnity. Contribution can be recovered by the owner of jettisoned goods either by direct suit or by enforcing through the ship-master, who is his agent for this purpose, a lien on each parcel of goods saved, belonging to each separate consignee, for a due proportion of his claim. STRANG, STEEL & Co. *v.* SCOTT & Co. . . . I. L. R., 17 Calc., 362
[L. R., 16 I. A., 240

9.————Maritime lien—*Sale of cargo to repair ship.*—The captain of an English ship, being unable to raise funds on a bottomry-bond to repair damage caused to the ship by stress of weather, sold portion of the cargo for such purpose and repaired the ship. In a suit by the owners of the cargo against (1) the captain, who was one of the owners of the ship, (2) a mortgagee of the ship, and (3) the agent of the latter in whose name the ship was registered, to recover the value of the cargo sold,—*Held* (1) that the owners of the cargo were not entitled to a personal decree against either the mortgagee or his agent, inasmuch as the captain was not their agent to pledge their credit for moneys required for repairs; (2) that the owners of the cargo were not entitled to a maritime lien on the ship which would take precedence of the mortgage. MUTHAYA *v.* MUTHAYA
[I. L. R., 5 Mad., 334

10.————*Authority of captain to bind owners for repairs of ship.*—The authority of the captain of a ship to bind her owners for repairs, and anything incidental thereto, can only exist by reason of his being their special agent for the purpose, which he will be presumed to be only in particular cases of necessity. BAYLEY *v.* TARUKNAUTH PORAMANIC . Bourke, O. C., 263

11.————*Master's lien on ship for wages—Act I of 1859, s. 58.*—The master of a ship has by Statute (Act I of 1859, s. 58) a lien upon the ship for the recovery of wages due. IN THE MATTER OF THE BARQUE "ANNE"
[2 Hyde, 273

12.————*Master's lien on ship for wages—Repairs, Lien for—Act I of 1859, ss. 55, 56.*—The *Persia*, on a return voyage from Jedda to Singapore, was driven into Bombay harbour through stress of weather. The owner, resident at Singapore, though frequently applied to, omitted to furnish funds to repair her, or to pay the wages of the mariners; and the master being unable to raise funds for these purposes on the credit of the ship or owner, on the application of the mariners, the ship was, in order to levy their wages, sold by the Magistrate under the provisions of ss. 55 and 56 of Act I of 1859. The master, who had been engaged at Singapore, then brought a suit on the admiralty side of the High Court, to recover out of the surplus proceeds of the ship his wages up to the time when he could return to Singapore, and his passage-money to that port. *Held* that he was entitled to recover such wages and passage-money. IN RE THE "PERSIA." EX-PARTE GARDNER . 6 Bom., O. C., 138

13.————*Lien on ship for repairs in port—Ship in dock.*—A ship in the river cannot be said to be delivered over to the possession of those who execute repairs; consequently no lien arose for repairs done. *Secus*—If the ship had been under repair in a dock belonging to the plaintiffs. SHIB CHUNDER DASS *v.* COCHRANE
[Bourke, O. C., 388

SHIPPING ORDER.

1.————Construction of order—*"Ready to receive cargo."*—The words "ready to receive cargo" inserted in a shipping order mean that the ship, on the day named in the shipping order, shall be ready to receive a full cargo by whomsoever offered, and not merely ready to receive the quantum of cargo mentioned in the shipping order. TAYLOR *v.* BROOKE . . 1 Bom., Ap., 48

2.————*Measurement—Right to have measurement taken.*—Where a shipping order authorized the receipt of "300 bales of cotton not exceeding 52 cubic feet measurement at the screw house," the fair meaning of the contract was taken to be, considering that it was a mercantile contract and looking at the surrounding circumstances, that the measurement by which the parties were to be bound was a measurement at the screw house; and that, if the agent of the defendants was present there and passed the bales as of the proper measurement or waived the right to measure and did not measure, the defendants could not afterwards insist upon a right to measure or go into an enquiry of what was the size of the bales. SCHILIZZI & Co. *v.* COX, STEEL & Co. . . 17 W. R., 545

SHROFFS, USAGE OF—

See HUNDI, LIABILITY ON.
[I. L. R., 1 Bom., 23

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————Acknowledgment of, by testator.

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[I. L. R., 1 Bom., 547

————Alteration of contract after—

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[I. L. R., 19 Calc., 65
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[I. L. R., 3 Bom., 242

——— Comparison of—

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH Marsh, 322
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——— of Jailor.

See CIVIL PROCEDURE CODE, 1882, s 87
[4 B. L. R., O C, 51

——— of Judge

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[I. L. R., 23 Calc, 480

——— of Magistrate, Warrant without—

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See CONTRACT—ALTERATION OF CONTRACTS—ALTERATION BY PARTY.
[I. L. R., 7 Bom, 418
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[1 Mad, 164
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[8 B L R, 305
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——— to Memorandum of Association, Effect of—

See COMPANY—ARTICLES OF ASSOCIATION AND LIABILITY OF SHAREHOLDERS.
[I. L. R., 13 Bom, 617
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See LIMITATION ACT, 1877, s. 19 (1871, s. 20)—ACKNOWLEDGMENT OF DEBTS.
[I L. R, 1 All., 683
I. L. R., 6 Calc., 340
I. L. R., 3 All., 317
1 Mad., 358
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I. L. R, 5 Bom, 88, 89
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I. L. R., 18 Bom., 586

SIGNATURE—*concluded.*

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE
[I. L. R, 16 All., 59

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE.
[I. L. R., 6 Mad, 396

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[I. L. R., 6 Mad., 396

See CASES UNDER WILL—ATTESTATION

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[I. L. R, 25 Calc, 911

1. ——— Signature of Rajah—*Title without name*—A signature of a Rajah of the ancient Nuddea family was held to be valid, even though it did not contain the name of any particular individual GUNER BISWAS *v* SREEGOPAL PAUL CHOWDHRY
[8 W. R., 395

2. ——— Signature of Magistrate—*Lithographed stamp of signature*—A Magistrate ought not to use a lithographed stamp of his signature QUEEN *v.* DEDAR NUSHYO . 14 W. R., Cr., 81

SÍR LAND.

——— Description of—*Entry in revenue records, Effect of*—The mere entry in the revenue records of land as sír will not make it sír land. Sír land is land which at some time or other has been cultivated by the zamindar himself, and which, although he may, from time to time, for a season, demise to shikmas, he designs to retain as resumable for cultivation by himself or his family whenever his requirements or convenience may induce him to resume it. BUDLEY *v.* BUKHTOO 3 N W, 203

SLANDER.

See DEFAMATION I. L. R., 13 Mad., 34

See LIBEL . I. L. R., 14 Bom., 97

See PARTIES—ADDING PARTIES TO SUITS—PLAINTIFFS I. L. R., 1 Mad., 383

See RIGHT OF SUIT—WITNESS.
[I. L. R, 15 Calc., 264
I. L. R., 10 All., 425

See WITNESS—CIVIL CASES—PRIVILEGES OF WITNESSES.
[I. L. R, 15 Calc, 264
I. L. R., 10 All., 425
I. L. R., 11 Mad., 477

——— of title.

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE.
[I. L. R, 1 Mad., 65

1. ——— Action for slander—*Misjoinder—Special damage*—An action for slander cannot be brought jointly against several defendants; separate actions should be brought against each

SLANDER—*continued.*

Quære—Whether words implying "you are a drunkard, thief, cheat, and the paramour of your sister-in-law, you bastard," applied to a Brahmin, are actionable *per se* without allegation of special damage. NILMADHUB MOOKERJEE *v.* DOOKEERAM KHOTTAH [15 B. L. R., 161

2. ——————— *Misjoinder—Special damage.*—An action for slander may be brought jointly against several defendants where the words spoken are not actionable *per se*, but only become so by reason of the special damage, which is the result of the conjoint action of all the defendants. WOOZEERUNNISSA BIBEE *v.* MAHOMED HOSSEIN . . . 15 B. L. R., 166 note

3. ——————— *Omission to give courtesy title in petition.*—The omission of a mere courtesy cannot be taken to be equivalent to slandering or libelling a man, and is not an actionable wrong. SITARAMA KRISHNA RAYADAPPA RANGA RAZ *v.* SANYASI RAZU PEDDA BALIYARA SIMHULU [3 Mad., 4

4. ——————— *Slander and assault—Special damage.*—Special damages are not necessary to be proved in a case of slander and assault. HOSSEIN *v.* BAKIR ALI [W. R., 1864, 302

5. ——————— *Verbal abuse—Hindus—Special damage.*—In a suit between Hindus in the Bombay mofussil, damages may be recovered for mere verbal abuse without proof of actual damage resulting therefrom to the plaintiff. KASHIRAM VALAD KRISHNA *v.* BHADU BAPUJI [7 Bom., A. C., 17

6. ——————— *Damages for verbal abuse.*—Damages cannot be claimed for mere verbal abuses or threatening language. PHOOLBASEE KOER *v.* PARJUN SINGH . 12 W. R., 369

7. ——————— *Verbal abuse—Special damage.*—While *C* was giving his evidence in open Court, in a suit of *A* against *B*, *A*, with the object of inducing the Judge to disbelieve *C*'s testimony, said to the witness that he was a drunkard. *Held* that the words were actionable without proof of special damage. SRIKANT ROY *v.* SATCORI SHAHA . . . . . 3 C. L. R., 181

See SREENATH MOOKERJEE *v.* KOMUL KURMOKAR [16 W. R., 83

KALI KUMAR MITTER *v.* RAMGATI BHUTTACHARJI [6 B. L. R., Ap., 99 : 16 W. R., 84 note

KANOO MUNDLE *v.* RAHUMOOLLAH MUNDLE [W. R., 1864, 269

GHOLAM HOSSEIN *v.* HUR GOBIND DASS [1 W. R., 19

TUKEE *v.* KHOSHDEL BISWAS . 6 W. R., 151

OSSEEMOODDEEN *v.* FUTTEH MAHOMED [7 W. R., 259

GOUR CHUNDER PUTEETUNDEE *v.* CLAY . [8 W. R., 256

SLANDER—*concluded.*

8. ——————— *Defamation—Action for abuse, no special damage being alleged—Damages, Measure of.*—The rule of English law which prohibits, except in certain cases, an action for damages for oral defamation unless special damage is alleged, being founded on no reasonable basis, should not be adopted by the Courts of British India. If defamatory expressions are used under such circumstances as to induce in the plaintiff reasonable apprehension that his reputation has been injured, and to inflict on him pain consequent on such belief, the plaintiff is entitled to recover damages without actual proof of loss sustained. *Semble*—An action will not lie for vulgar abuse or hasty expressions, but for malicious or culpable oral defamation an action will lie. Vindictive damages should not be awarded, and a distinction should be drawn in awarding damages when the defendant acts from carelessness and when he acts maliciously. In the latter case the plaintiff is entitled to full compensation for the pain suffered and in the former to a sum sufficient to establish his innocence of the charges made. PARVATHI *v.* MANNAR . . . . I. L. R., 8 Mad., 175

9. ——————— *Cause of action—Defamation—Verbal abuse—Special damage.*—A suit to recover damages for verbal abuse of a gross character may be maintained without proof of consequential damage. IBIN HOSEIN *v.* HAIDAR [I. L. R., 12 Calc., 109

10. ——————— *Defamation—Damages — Consequential damage.* — A suit for damages for defamation of character involving loss of special position and injury to reputation will lie without proof of special damage. *Parvathi* v. *Mannar, I. L. R., 8 Mad., 175*, and *Srikant Rai* v. *Satcori Shaha, 3 C. L. R., 181*, followed. TRAILOKYA NATH GHOSE *v.* CHUNDRA NATH DUTT [I. L. R., 12 Calc., 424

11. ——————— *Cause of action—Damages for insult, loss of reputation, and mental pain by the use of abusive language—Suit for libel and slander—Special damage.*—*Held* by the majority of the Full Bench (MACLEAN, C.J., MACPHERSON, HILL, and JENKINS, JJ., GHOSE, J., dissenting) that the mere use of abusive and insulting language, such as sala (wife's brother), haramzada (base born or bastard), soor (pig), baper beta (son of the father, that is, ironically, bastard), apart from defamation, is not actionable irrespective of any special damage. *Per* GHOSE, *J.*—A case like the present should be decided according to the principles of justice, equity, and good conscience, and therefore it is but just and right that a person thus vilified, who has suffered from insult and mental pain, should be entitled to maintain an action irrespective of any special damage. GIRISH CHUNDER MITTER *v.* JATADHARI SADUKHAN [I. L. R., 26 Calc., 653
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SLAUGHTER-HOUSE.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 7 B. L. R., 499, 516
[25 W. R., Cr., 72

SLAUGHTER-HOUSE—*concluded.*

[illegible]

abettor. *Per* MITTER, J (dissenting)—The Judge has found that the lease was given by *R* with the avowed *object of continuing the slaughter house,* and admittedly for the express purpose of evading the law; the case therefore falls within the express words of the section, "or allows cattle to be slaughtered" IN THE MATTER OF THE PETITION OF THE MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA

[6 B. L. R., Ap, 28: 14 W. R., Cr, 67

2.———— *Beng. Act VII of 1865, s 1—Servant of licensee*—No person is liable to any penalty under s. 1, Bengal Act VII of 1865, except a person who, without a license, uses a place or building as a slaughter-house, either by letting it out for such purpose or by employing servants and others for the purposes of killing cattle therein; but a person who may be the mere servant of a butcher killing cattle in a particular slaughter-house, or a butcher resorting accidentally or occasionally to a *slaughter-house for the purpose of killing,* and killing an ox or sheep there, does not use the place as a slaughter house within the meaning of s. 1, Bengal Act VII of 1865. MUNICIPAL COMMISSIONERS FOR THE SUBURBS OF CALCUTTA *v.* JAMIR SHAIKH

[16 W. R., Cr., 4

3.———— Notice to licensees of slaughter-house—*Beng. Act VII of 1865*—The length of notice to be given to persons holding licenses for carrying on slaughter-houses under Bengal Act VII of 1865 must be determined in each case according to its own particular circumstances. IN RE HALDANE . . . 6 W. R., Cr, 77

SLAVERY.

See UNLAWFUL COMPULSION

[I. L. R., 10 Calc., 573

1. Act V of 1843—*Mahomedan law—Succession—Willa—Emancipated slaves*—Assuming that, by the wilIa rule of the Mahomedan law, the heirs of the master who emancipates a slave *are entitled to the property of which the emancipated* slave dies possessed to the exclusion of his natural heirs, the effect of s. 3, Act V of 1843, which enacts "that no person who may have acquired property by inheritance shall be dispossessed or prevented from taking possession thereof on the ground that

[illegible]

been emancipated after the passing of the Act, but also where he has been emancipated before its passing. The exclusion of the natural heirs of an emancipated slave in favour of the heirs of his emancipator is a disability arising out of the status of slavery similar in its nature to the exclusion, under the Mahomedan law, of the natural heirs of an emancipated slave by a master or his heirs, and since the general scope and object of Act V of 1843 is to remove all such disabilities, the Civil Courts are

[illegible]

[I. L. R., 3 Bom., 422: 5 C. L. R., 11 L. R., 6 I. A., 137

In the same case, in the Court below, it was held that the effect of Act V of 1843 is to prevent the enforcement of any rights which would, if that Act had not been passed, have arisen out of the status of slavery; and a suit, brought by the heir of the master of a slave girl, emancipated by and married to such master, in his lifetime, to recover, as such heir, property in the hands of persons descended from her, is one the cognizance of which is barred by s. 2 of the Act. AJMUDDIN KHAN *v.* ZIA UNNISSA BEGUM . . . . . . 12 Bom., 156

2. ——— Spiritual slavery of disciple to guru—*Act V of 1843—Agreement to become slave*—This was a suit brought in 1891 by the head of an adhinam for declarations that a muth was subject to his control; that he was entitled to appoint a manager; that the present head of the muth was not duly appointed, and his nomination by his predecessor was invalid; and for delivery of the possession of the moveable and immoveable properties of the muth to a nominee of the plaintiff. The claim extended also to religious establishments at Benares and elsewhere connected with the muth The muth was founded by a member of the adhinam. Many previous heads of the muth had agreed to be "slaves" of the head of the adhinam, but for over sixty years the head of the adhinam had exercised no management over the endowments belonging to the muth, and in a suit (compromised) of the year 1834 the present pretensions of the adhinam had been denied *in toto* *Held* that the agreement of the head of the muth to become the "slave" of his guru could have no legal operation since 1843, and that the

SLAVERY—*concluded.*

adverse possession of the defendant from that year was fatal to any claim of the plaintiff under such agreement. GIYANA SAMBANDHA PANDARA SANNADHI *v.* KANDASAMI TAMBIRAN [I. L. R., 10 Mad., 375

SLAVERY (CRIMINAL CASES).

1. ——— Penal Code, s. 370—*Buying or disposing of girl as a slave.*—*R*, having obtained possession of *D*, a girl about eleven years of age, disposed of her to a third person, for value, with intent that such person should marry her, and such person received her with that intent. *Held* that *R* could not be convicted of disposing of *D* as a slave under s. 370 of the Penal Code. *Queen* v. *Sikundur Bukhut*, 3 *N. W.*, 146, remarked upon. EMPRESS OF INDIA *v.* RAM KUAR . I. L. R., 2 All., 723

2. ——— *Treating kidnapped girl as slave.*—If, knowing a girl has been kidnapped, a person wrongfully confines her, and subsequently detains her as a slave, he is guilty of two separate offences punishable under the Penal Code. Slavery is a condition which admits of degrees, and a person is treated as a slave if another asserts an absolute right to restrain his personal liberty, and to dispose of his labour against his will, unless that right is conferred by law, as in the case of a parent, or guardian, or a jailer. QUEEN *v.* SIKUNDUR BUKHUT . . . . . 3 N. W., 148

3. ——— *Obligation of Judge to try charge of.*—The Sessions Judge was held bound to try the accused upon his commitment by the Deputy Magistrate on a charge, under s. 370, Penal Code, of having detained a woman against her will as a slave. QUEEN *v.* FIRMAN ALI [16 W. R., Cr., 73

4. ——— *Meaning of term.*—*S* transferred to *A* for R25 his rights in the person of *B*, a girl of thirteen years. In a document in which the transaction was recorded, *B* was described as a vellati or slave girl purchased by *S P*. *Held* that *A* was guilty of buying *B* as a slave within the meaning of s. 370 of the Penal Code. AMINA *v.* QUEEN-EMPRESS [I. L. R., 7 Mad., 277

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[I. L. R., 1 All., 67

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1. LAW OF SMALL CAUSE COURTS, MOFUSSIL.

1. ——— Law of Civil Courts—*Matters of contract between Hindus*.—In all matters of contract and dealing between Hindus, the law applicable in Civil Courts of the country governs Courts of Small Causes. Woodoy Chand Halder *v.* Gooroo Churn Mojoomdar . 13 W. R., 148

2. ——— Rules and orders in Military Code.—*Held* that the rules and orders in the Military Code are not binding on a Small Cause Court. Raichand Mangal *v.* Abdulla Amruddin Kotval
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2. JURISDICTION.

3. ——— General cases—*Act VI of 1865*

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local limits of a Small Cause Court jurisdiction. Anonymous . . 2 W. R., S. C. C. Ref., 5

4. ——— *Suits cognizable by Village Munsif under Mad. Reg. IV of 1816, s. 5.*—A Small Cause Court had concurrent jurisdiction to try suits for a sum not exceeding R10, cognizable by a Village Munsif under s. 5, Regulation IV of 1816. Parasoorama Pillay *v.* Ramasawmy *alias* Coolla Ramasawmy . 5 Mad., 45

5. ——— *Village Courts Act (Mad. Act I of 1889), s. 13—Civil Procedure Code, s. 15—Jurisdiction of Small Cause Courts to hear suits cognizable by Village Munsif*—The term "Court of Lowest grade" in the Civil

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

Procedure Code, s. 15, refers only to Courts to which the Civil Procedure Code is applicable, and consequently Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs to hear suits which are cognizable by the latter. MIRKHAN *v.* KADARSA . . . I. L. R., 13 Mad., 145

6. ———— *Suits cognizable by District Munsif in jurisdiction of Small Cause Court.*—A suit was brought in the Small Cause Courts to recover two sums of money, one cause of action being for money lent and the other for goods sold and delivered. The amount of both claims was within the jurisdiction of the Small Cause Court, but the pecuniary claim in each case was cognizable by the District Munsif on the Small Cause Court side. *Held* that the Small Cause Court had jurisdiction to entertain the suit. ARUNACHELLAM CHETTY *v.* GANGATHARAM AIYAN . . . 5 Mad., 287

7. ———— *Suit not cognizable against some of the defendants.*—A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSHO-TAM LAKHMIRAM *v.* PEMA HARJI [I. L. R., 21 Bom., 121

8. ———— *Suit for sum on ...nd the whole amount of which is beyond jurisdic...n.*—A Small Cause Court can try a suit for an ...ount within its jurisdiction, notwithstanding that ... upon a bond the amount of which is beyond its ...sdiction. SUKEE MONEE DEBIA *v.* HUREE-...UN MOOKERJEE . 6 W. R., Civ. Ref., 6

———— *Suit on kabuliat ... which more than R500 are payable.*—That ...ction of a Small Cause Court, in a suit on a ...t for damages not exceeding R500, is not ... because damages exceeding that sum may be ... under the same kabuliat. SMITH *v.* GOPAL . . 3 W. R., S. C. C. Ref., 14

———— *Suit for portion ...ue under agreement.*—Where the plaintiff ... a portion of grain in the nature of net rent ... fallen due, that amount being within its ...n, although the whole amount payable ...o last under the agreement would be in ...s jurisdiction,—*Held* that the suit was ...y a Court of Small Causes. NARASIDA-...NA KAUNDAN . . 2 Mad., 440

———— *Suit for interest ... more than R500.*—Where a suit was ...nterest amounting to less than R500, ...nd for R1,000, not then payable,— ...urt of Small Causes had jurisdiction ...he plaintiff having had a separate and ...f action upon the bond entitling him ...nual interest as it accrued due. The ... of the bond is set up as a defence ...e. ANANTHA NARAIYANAPPAIYAN ...AN *v.* GANAPATY AIYAN [2 Mad., 469

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2. JURISDICTION—*continued.*

CHETU NARAYANA PILLAY *v.* AYAMPERUMA... AMBALOM . . . . . 4 Mad., 44...

12. ———— *Suit for profits of land—Prayer for account—Question of title.*—The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKAR *v.* BALAJI BAPUJI . . . I. L. R., 21 Bom., 248

13. ———— *Separate causes of action each within Munsif's jurisdiction.*—Several claims, each of which separately is within the Small Cause Court jurisdiction of a District Munsif, may be joined together and form the basis of a suit in the Small Cause Court. As where there was an agreement that defendant should occupy land for two years and deliver a certain quantity of paddy at four specified periods; in a suit for rent,—*Held* that, though the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed to be one cause of action. CHOOKALINGA PILLAI *v.* KUMARA VIRU-THALAM . . . . 4 Mad., 334

14. ———— *Act XI of 1865—Act IX of 1850, s. 34—Cause of action, Dividing.*—There is no provision in the Mofussil Small Cause Courts Act (XI of 1865), similar to s. 34 of the Presidency Small Cause Court Act (IX of 1850), which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency. UMED-DHOLCHAND *v.* PIR SAHEB JIVA MIYA [I. L. R., 7 Bom., 134

15. ———— *Provincial Small Cause Courts Act (IX of 1887), s. 23—Civil Procedure Code, s. 586—Suit of the nature cognizable by Courts of Small Causes.*—A suit is none the less a suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred on it by s. 23 of the Provincial Small Cause Courts Act, and returned the plaint to be presented to a Court having jurisdiction to determine a question of title raised therein. *Kali Krishna Tagore* v. *Izzat-an-nissa Khatun, I. L. R., 24 Calc.,* 557, followed. SADA SHANKAR *v.* BRIJ MOHAN DAS [I. L. R., 20 All., 480

16. ———— **Dwelling or carrying on business**—*"Dwelling"—Actual residence.*—The actual presence of the defendant within the jurisdiction of the Court is not necessary, if he was there dwelling at the commencement of the suit, and a temporary dwelling is sufficient to give jurisdiction to a Small Cause Court. ANANTHA NARAYANA *v.* PERIYANA KONE . . . 5 Mad., 101

17. ———— *Dwelling—Casual residence—Act XLII of 1860, s. 4.*—Mere casual presence, or even residence for a te... without the intention of...

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

within the jurisdiction of a Small Cause Court within the meaning of s 4 of Act XLII of 1860 A person, resided at Coimbatore, but had some cultivated land within the local jurisdiction of Ootacamund, to which place he came to answer another demand against him *Held* that he did not dwell within the jurisdiction of the Ootacamund Small Cause Court SAMINATHA PILLAI *v* VARISAI MAHOMED RAVATTAN . . . 2 Mad., 304

18. ———— *Temporary absence—Dwelling—Act XI of 1865, s 8*—Although a defendant may be temporarily absent from his dwelling house, yet if he retains the same, he will be held to dwell there within the meaning of the Small Cause Court Act (XI of 1865) To dwell in a place is to have one's permanent abode there. MADHO DOSS *v.* SITA RAM . . . 3 N. W , 131

19. ———— *Temporary absence from imprisonment—Residence*—Temporary imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode on the termination of their imprisonment. GOPAL CHUNDER SIRCAR *v* KURRODHAR MOOCHEE [7 W. R., 340

20. ———— *Dwelling—Temporary residence—Attendance at race meeting*—In the case of a person attached to a regiment stationed at Shahjehanpore, who had been gazetted to two years' furlough in India, served with a summons issued out of the Small Cause Court at Meerut whilst attending a race meeting at the latter place in respect of a debt contracted beyond the *jurisdiction of that Court,*—*Held* that, if he had not availed himself of furlough, but was only present on short leave at Meerut, he was not dwelling within the jurisdiction of the Meerut Court, or if, having availed himself of furlough, he retained his permanent residence at Shahjehanpore, and merely visited Meerut for a few days, he was in that case also not dwelling at Meerut, but if, having availed himself of furlough and having retained no permanent place of residence at Shah- [illegible] ment of his furlough, in such case he must be held to have been dwelling at Meerut when the summons was served. MAYHEW *v.* TULLOCH . . . 1 N. W., 25

21. ———— *Residence as domestic servant*—A suit is not maintainable at K against a defendant who is employed as a domestic servant at M, and who is not shown to have any immediate or early intention of returning to K, where his family are continuing to reside; the word "dwell" in s. 8, Act X of 1865, it being held, must be used in the strict sense of actual residence. POROASH PARAY *v* HACHIM . . . 7 W. R., 417

22. ———— *Act XI of 1865, s 8—Place of dwelling*—A servant residing within the jurisdiction of one Small Cause Court who has a family house within the limits of the jurisdiction of another Small Cause Court in which his father lives, and which he himself occasionally visits does not [illegible] Court [illegible] 5, and [illegible] there, a suit against [illegible] JENDU MALHARI *v* GOVIND ATMARAM 10 Bom., 409

[illegible] not cognizable in a Small Cause Court, if at the time of the commencement of the suit the husband does not dwell, nor personally or through a servant or agent carry on business or work for gain within the local limits of the jurisdiction of the Court. BOWMAN *v* SHAWE . . . 10 W. R., 240

24. ———— *Commission agent—Residence—Carrying on business*—A person who carries on business at a place by a commission agent, to whom he only consigns goods, cannot be said to carry on business or personally to work for gain within the local limits of a Court where the commission agent resides GOLEE MOHUN ROY *v* PROTAP CHUNDER ROY . 11 W R., 530

25. ———— *Act XI of 1865, s 8—Residence—Zamindari business*—Zamindari business is not such business as is intended by Acts XI of 1865, s. 8, and mookhtears and karpurdazes carrying it on are not servants or agents within the meaning of s. 11 Where zamindars from the mofussil come in occasionally to the head-quarters of a Small Cause Court to prosecute or defend suits, settle business with creditors or for social intercourse or medical treatment, and remain in their boat or put up at the houses of their mookhtears and karpurdazes, they cannot be said to have a "lodging" within the limits of the Court, such as is intended by s. 8, expl. A NOBIN CHUNDER *v* BURODA KANT SHAHA . . . 10 W R., 341

ANONYMOUS . . . 23 W R., 223

26. ———— *Act XI of 1865, s 9—Suit against Agent of Governor General*—A suit against an Agent to the Governor General, on the part of Government, is substantially a suit against Government, and ought, under s. 9, Act XI of 1865, to be brought in a Court having jurisdiction at the seat of Government. ROOPUN TEWAREE *v.* BUCKLE . . . 10 W. R., 142

27. ———— *Residence in Cantonment—Practising in Small Cause Court jurisdiction*—Where a pleader resides within the limits of a cantonment, and practises as a pleader within the jurisdiction of a Small Cause Court, both the Cantonment Magistrate and the Small Cause

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

Procedure Code, s. 15, refers only to Courts to which the Civil Procedure Code is applicable, and consequently Small Cause Courts have concurrent jurisdiction with Courts of Village Munsifs to hear suits which are cognizable by the latter. MIRKHAN *v.* KADARSA . . . I. L. R., 13 Mad., 145

6. ——————— *Suits cognizable by District Munsif in jurisdiction of Small Cause Court.*—A suit was brought in the Small Cause Courts to recover two sums of money, one cause of action being for money lent and the other for goods sold and delivered. The amount of both claims was within the jurisdiction of the Small Cause Court, but the pecuniary claim in each case was cognizable by the District Munsif on the Small Cause Court side. *Held* that the Small Cause Court had jurisdiction to entertain the suit. ARUNACHELLAM CHETTY *v.* GANGATHARAM AIYAN . . . 5 Mad., 287

7. ——————— *Suit not cognizable against some of the defendants.*—A suit is not cognizable by a Small Cause Court unless it is cognizable by it as against all the defendants. PARSHOTAM LAKHMIRAM *v.* PEMA HARJI [I. L. R., 21 Bom., 121

8. ——————— *Suit for sum on bond the whole amount of which is beyond jurisdiction.*—A Small Cause Court can try a suit for an amount within its jurisdiction, notwithstanding that it is upon a bond the amount of which is beyond its jurisdiction. SUKEE MONEE DEBIA *v.* HUREEMOHUN MOOKERJEE . 6 W. R., Civ. Ref., 6

9. ——————— *Suit on kabuliat under which more than R500 are payable.*—That jurisdiction of a Small Cause Court, in a suit on a kabuliat for damages not exceeding R500, is not affected because damages exceeding that sum may be payable under the same kabuliat. SMITH *v.* GOPAL SHEIKH . . . 3 W. R., S. C. C. Ref., 14

10. ——————— *Suit for portion of sum due under agreement.*—Where the plaintiff sued for a portion of grain in the nature of net rent which had fallen due, that amount being within its jurisdiction, although the whole amount payable from first to last under the agreement would be in excess of its jurisdiction,—*Held* that the suit was cognizable by a Court of Small Causes. NARASIDAVUR *v.* MARANA KAUNDAN . . 2 Mad., 440

11. ——————— *Suit for interest on bond for more than R500.*—Where a suit was brought for interest amounting to less than R500, due upon a bond for R1,000, not then payable,—*Held* that a Court of Small Causes had jurisdiction to try the case, the plaintiff having had a separate and complete cause of action upon the bond entitling him to recover the annual interest as it accrued due. The fact that forgery of the bond is set up as a defence makes no difference. ANANTHA NARAIYANAPPAIYAN *alias* ASVATA AIYAN *v.* GANAPATY AIYAN [2 Mad., 469

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

CHETU NARAYANA PILLAY *v.* AYAMPERUMAL AMBALOM . . . . . 4 Mad., 447

12. ——————— *Suit for profits of land—Prayer for account—Question of title.*—The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKAR *v.* BALAJI BAPUJI . . . I. L. R., 21 Bom., 248

13. ——————— *Separate causes of action each within Munsif's jurisdiction.*—Several claims, each of which separately is within the Small Cause Court jurisdiction of a District Munsif, may be joined together and form the basis of a suit in the Small Cause Court. As where there was an agreement that defendant should occupy land for two years and deliver a certain quantity of paddy at four specified periods; in a suit for rent,—*Held* that, though the plaintiff might have sued for each instalment of rent as it fell due, the aggregate of such unpaid instalments should be deemed to be one cause of action. CHOCKALINGA PILLAI *v.* KUMARA VIRUTHALAM . . . . . . 4 Mad., 334

14. ——————— *Act XI of 1865—Act IX of 1850, s. 34—Cause of action, Dividing.*—There is no provision in the Mofussil Small Cause Courts Act (XI of 1865), similar to s. 34 of the Presidency Small Cause Court Act (IX of 1850), which forbids a plaintiff's dividing any cause of action for the sake of bringing two or more suits in the Small Cause Courts of the Presidency. UMED DHOLCHAND *v.* PIR SAHEB JIVA MIYA [I. L. R., 7 Bom., 134

15. ——————— *Provincial Small Cause Courts Act (IX of 1887), s. 23—Civil Procedure Code, s. 586—Suit of the nature cognizable by Courts of Small Causes.*—A suit is none the less a suit cognizable by a Court of Small Causes because that Court may have exercised the discretion conferred on it by s. 23 of the Provincial Small Cause Courts Act, and returned the plaint to be presented to a Court having jurisdiction to determine a question of title raised therein. *Kali Krishna Tagore* v. *Izzat-an-nissa Khatun, I. L. R., 24 Calc., 557,* followed. SADA SHANKAR *v.* BRIJ MOHAN DAS [I. L. R., 20 All., 480

16. ——————— Dwelling or carrying on business—*"Dwelling"—Actual residence.*—The actual presence of the defendant within the jurisdiction of the Court is not necessary, if he was there dwelling at the commencement of the suit, and a temporary dwelling is sufficient to give jurisdiction to a Small Cause Court. ANANTHA NARAYANA *v.* PERIYANA KONE . . . . 5 Mad., 101

17. ——————— *Dwelling—Casual residence—Act XLII of 1860, s. 4.*—Mere casual presence, or even residence for a temporary purpose, without the intention of remaining, is not dwelling

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

within the jurisdiction of a Small Cause Court within the meaning of s 4 of Act XLII of 1860 A person, resided at Coimbatore, but had some cultivated land within the local jurisdiction of Ootacamund, to which place he *came to answer another* demand against him *Held* that he did not dwell within the jurisdiction of the Ootacamund Small Cause Court SAMINATHA PILLAI *v* VARISAI MAHOMED RAVATTAN . . 2 Mad, 304

to have one's permanent abode there MADHO DOSS *v. SITA RAM* . . . . . 3 N. W., 121

19 ———— *Temporary absence from imprisonment—Residence*—Temporary imprisonment beyond the jurisdiction of a Small Cause Court was held not to bar the jurisdiction of that Court in respect of defendants who formerly resided within its jurisdiction and whose families continued to reside within it, the inference from the latter fact being that the defendants had an intention of returning to their former place of abode on the termination of their imprisonment GOPAL CHUNDER SIRCAR *v.* KURNODHAR MOOCHEE [7 W. R., 349

20. ———— *Dwelling—Tem-*

but was only present on short leave at Meerut, he was not dwelling within the jurisdiction of the Meerut Court, *or if, having availed himself* of furlough, he retained his permanent residence at Shahjehanpore, and merely visited Meerut for a few days, he was in that case also not dwelling at Meerut, but if, having availed himself of furlough and having retained no permanent place of residence at Shah-

have been dwelling at Meerut when the summons was served. MAYHEW *v.* TULLOCH . 4 N. W., 25

21. ———— *Residence as domestic servant*—A suit is not maintainable at K

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued*

the strict sense of actual residence. POBGASH PARAY *v* HACHIM . . . 7 W. R., 417

another Small Cause Court in which his father lives, and which he himself occasionally visits, does not Court 35, and there, GENDU

MALHARI *v* GOVIND ATMARAM . 10 Bom, 409

of the commencement of the suit the husband does not dwell, nor personally or through a servant or agent carry on business or work for gain within the local limits of the jurisdiction of the Court BOWMAN *v.* SHAWE . . . 10 W. R., 240

24. ———— *Commission agent—Residence—Carrying on business*—A person who carries on business at a place by a commission

25. ———— *Act XI of 1865, s 8—Residence—Zamindari business*—Zamindari

s 8, expl A NOBIN CHUNDER *v.* BURODA KANT SHAHA . . . . 19 W R, 341

ANONYMOUS . . . 23 W. R., 223

26. ———— *Act XI of 1865, s 9—Suit against Agent of Governor General*—A suit against an Agent to the Governor General, on the part of Government, is substantially a suit against Government, and ought, under s 9, Act XI of 1865, to be brought in a Court having jurisdiction at the seat of Government ROOPUN TEWAREE *v.* BUCKLE . . . . 10 W. R., 142

27. ———— *Residence in Cantonment—Practising in Small Cause Court jurisdiction*—Where a pleader resides within the limits of a cantonment, and practises as a pleader within the jurisdiction of a Small Cause Court, both the Cantonment Magistrate and the Small Cause

Court Judge have concurrent jurisdiction over him to the amounts respectively cognizable by them. SHAPURJI JEHANGIR *v.* MORGAN [4 Bom., A. C., 187

28. ———— *Dwelling—Act XI of 1865, s. 8.*—The defendant, an officer in a regiment stationed at Vellore, was sued for money due for the rent of a house occupied by him at Madras. While absent on leave on medical certificate, he rented the plaintiff's house at Madras, where he was residing at the time of the institution of the suit; but he returned to Vellore previous to the hearing of the suit. The Small Cause Court Judge of Vellore held that the defendant was dwelling at Vellore at the time of the institution of the suit within the meaning of s. 8, Act XI of 1865. *Held* that there was nothing in point of law to prevent the Judge from affirming his jurisdiction. KISHUN SING *v.* STURT [5 Mad., 471

29. ———— *Defendant residing out of jurisdiction—Act XXIII of 1861, s. 4.*—The provisions of s. 4 of Act XXIII of 1861 were applicable to Courts of Small Causes in the mofussil. ANPURNABAI *v.* SAKHARAM JAGANNATH [6 Bom., A. C., 256

30. ———— *Cause of action—Defendant residing out of jurisdiction—Act XXIII of 1861, s. 4.*—When a cause of action had arisen within the local jurisdiction of a Small Cause Court, but one of several defendants resided out of such jurisdiction, sanction might be given, under s. 4 of Act XXIII of 1861, by the High Court to the Small Cause Court to try the suit. MATHURADAS JAGJIVANDAS *v.* NATHA BAJA 6 Bom., A. C., 131

MOHUR RAM MOODEE *v.* KARBAREE SIRDAR [18 W. R., 312

31. ———— *Suit against joint obligors—Act XLII of 1860, s. 21.*—An order from the High Court was necessary to enable a Court of Small Causes to entertain a suit against several obligors, one of whom at the time of filing the plaint was neither resident nor personally working for gain within the limits of its jurisdiction. Such order should be applied for after the reception of the plaint, upon a statement of the circumstances of the particular case. S. 21 of Act XLII of 1860 was to have the same operation as if Act XXIII of 1861 had formed part of Act VIII of 1859 when it became law. SABHAPATI MUDALI *v.* MUTTUSVAMI MUDALI [1 Mad., 103

32. ———— *Madras Civil Courts Act (III of 1873)—Act XI of 1865, s. 8.*—Since the passing of the Madras Civil Courts Act (III of 1873) the general control over all the Civil Courts is vested in the District Judge to whom the application should be made. It is only in cases where the defendant is beyond the local jurisdiction of the District Court, and the Court before whom the suit is instituted has not otherwise jurisdiction under Act XI of 1865, s. 8, that a reference to the High Court is necessary. ANONYMOUS . 8 Mad., Ap., 10

33. ———— *Suit for debt against defendants with joint liability—Act XXIII of 1861, s. 4.*—A suit for debt against two defendants whose liability was joint, but one of whom at the time of filing the plaint was neither resident nor personally working for gain within the limits of the jurisdiction, might be tried by a Small Cause Court within whose jurisdiction the other defendant was resident at the time of the commencement of the suit, provided an order was obtained from the High Court under s. 4 of Act XXIII of 1861. RUNGIAH PILLAI *v.* CHINNASAMI PILLAI . . 3 Mad., 374

34. ———— *Joint bond—One of parties out of jurisdiction—Act XI of 1865, s. 12.*—In a suit brought on a bond jointly executed by the defendants, one of whom resided in Calcutta, and the other within the jurisdiction of the Munsif's Court at Alipore,—*Held* that it was cognizable by the Small Cause Court, although the authority of the High Court was necessary before it was tried, and therefore, under s. 12, Act XI of 1865, the Munsif had no jurisdiction to try the suit. KHODA BAKSH MISTRI *v.* BENI MANDAL [6 B. L. R., 719 note: 14 W. R., 156

35. ———— **Account**—*Suit by gomashta for excess expenses.*—A suit by a gomashta for excess expenses incurred by him over and above the amount of rents collected by him was held to be cognizable in the Small Cause Court, notwithstanding that the nature of the defence might render it necessary to investigate the accounts of the mehal. PROSUNNO CHUNDER ROY *v.* SREENATH SREEMANEE [7 W. R., 422

36. ———— *Suit to recover balance of account by tehsildar.*—A suit to recover the balance of nikasi papers furnished by defendant in his capacity of tehsildar, there being an allegation in the plaint that the defendant verbally promised to pay part of the sum claimed under the circumstances mentioned therein, was held not to be cognizable by a Court of Small Causes. SRISHTEEDHUR BOSE *v.* SHAMA CHURN GHOSE . . 14 W. R., 53

See GRANT *v.* RAM TONOO BHOOMICK [10 W. R., 83

37. ———— *Act XI of 1865, s. 6—Suit for balance due on account of rents.*—A suit for a balance due on account of rents collected from the plaintiffs' zamindaris by the defendants' father acting as agent of the plaintiffs is a suit in which money is claimed as due on a contract within the meaning of s. 6, Act XI of 1865. Where the amount claimed in such a suit does not exceed R500, it is cognizable by a Small Cause Court notwithstanding it may be necessary to go into the accounts of both parties to determine what is due. DYEBUKEE NUNDUN SEN *v.* MUDHOO MUTTY GOOPTA [I. L. R., 1 Calc., 123: 24 W. R., 478

2. JURISDICTION—*continued*

38. ——— *Suit against guardian and manager of property for rents collected by him—Trustee bound to account* —In a suit to recover from the guardian of a minor and the manager of ... benami, a ... rents colle... —*Held* th... simply as an agent to collect plaintiff's rents, but was bound as a trustee to account for the proceeds of the property, and that the claim was therefore not cognizable in a Small Cause Court. RAM JOY MOJOOMDAR *v.* KEDAR NARAIN ROY . 25 W. R., 75

... ROY *v.* MADHUB CHUNDER ... [21 W. R., 283

40. ——— Act XL of 1858, s. 3—*Defending suit without certificate* —A Court of Small Causes, constituted under Act XI of 1865, is competent under ... relative of ... behalf with ... it has jurisdiction in relation to the subject-matter of the suit. KHANTO BEWAH *v.* NUND RAM NATH [15 W. R., 369

41. ——— Alternative relief—*Act XI of 1865, s. 6* —In a suit by *A*, asking that *B* might be ordered to fill up an excavation or to pay him R25 as damages for the same, it appeared that there was no ground for the first relief sought *Held* the suit was cognizable by the Court of Small Causes. NANDA KUMAR BANERJEE *v.* ISHAN CHANDRA BANERJEE [1 B. L. R., A. C., 91 : 10 W. R., 130

42. ——— Arbitration—*Civil Procedure Code, s. 327* —When a matter had been referred to ... and the defendant resided within its jurisdiction. ELAM PARAMANICK *v.* SOJAITOLLAH [1 B. L. R., A. C., 43 : 10 W. R., 85

BHIKOB *v.* EDALJI MANCHARJI. VITHAL AMBARAM *v.* DAYABHAI MULKHAR . 10 Bom., 54

GANGAPPA *v.* KARINAPPA . 5 Mad., 128

43. ——— *Arbitration award—Act XI of 1865, s. 6—Liability arising under an award* —A liability arising under an award is not one of such a nature as to fall within the terms used in the Small Cause Court Act to denote the claims cognizable by such Court. GUNESHEE *v.* CHOTAY LAL . . . . 3 N. W., 117

DURJAN SINGH *v.* SIBIA . 7 N. W., 329

44. ——— *Provincial Small Cause Court's Act (IX of 1887) sch II, cl 24—Civil Procedure Code, ss 525, 526—Suit to recover* ... [I. L. R., 13 Mad., 344

... a Civil Court against a soldier in Her Majesty's service up to judgment, under proviso to s 144 of the Army Act (Stat 44 & 45 Vict, c 58), however small may be the amount of the debt The question whether the defendant is a soldier or not arises only when the plaintiff seeks to execute his decree. KISANDAS BUDHMAL *v.* HALPIN [I. L. R., 10 Bom., 218

46. ——— *Army Act (44 & 45 Vict., c 58), ss 148 and 151—Courts of Request, their jurisdiction—Court of Small Causes, Power of—Construction of s 151, cl 1 of the Army Act* —The Army Act (44 & 45 Vict., c 58) gives jurisdiction to a Court of Small Causes in all actions of debt and personal actions against persons subject to military law (other than soldiers in the regular forces) over which such Court would ordinarily exercise jurisdiction, and provides a Court of Requests (s. 118) for those cases only where an action of the value of R400 or under has to be brought against such persons at a place lying beyond the jurisdiction of any Small Cause Court *Held* also that the words "within the jurisdiction" in s. 151, cl 1, referred to "actions," and not to "persons." SHERE ALI *v.* PRENDERGAST [I. L. R., 13 Calc., 143

47. ——— *Army Act of 1881, ss 144, 151—Civil Procedure Code, s 465—Jurisdiction of Small Cause Courts over soldiers* —*A* sued a soldier to recover a debt not amounting to £30. *Held* that the suit was cognizable by a Court of Small Causes. *Semble*—The commanding officer of the defendant was bound to cause the summons of the Small Cause Court to be served on him MAHOMED *v.* AGGAS . . . I. L. R., 10 Mad., 319

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

48. ———— Attachment—*Attachment of immoveable property before judgment.*—A Court which cannot attach primarily in execution of its decree cannot attach in anticipation of it. A Small Cause Court therefore cannot grant an attachment before judgment of immoveable property. MARTHAMMA *v.* KITTU SHERRGARA . 6 Mad., 91

49. — Cess—*Suit to recover arrears of cess.*—A suit brought to recover arrears of a cess is not a suit of the nature cognizable by Small Cause Courts. KASIM ALI *v.* SHADEE . 3 N. W., 21

50. ———— *Act XI of 1869, s. 6—Suit for zamindari dues and cesses.*—The plaintiff claimed from the defendants, as joint decree-holders, a fourth share of the proceeds realized by auction-sale through the Court of the Munsif of certain houses, situate on land subject to a village-custom whereby a proprietary due of the above amount was recognized and payable to the zamindar of the said land. The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zamindari dues or cesses were in the nature of suits cognizable by a Court of Small Causes,—*Held* by the Full Bench that the claim as brought did not fall within any of the classes of suits cognizable by the Courts of Small Causes: *aliter* if the due was payable in virtue of a contract. NANKU *v.* BOARD OF REVENUE

[I. L. R., 1 All., 444

51. ———— *Suit to recover road cess—Road Cess Act (Beng. Act X of 1871).*—A suit to recover road-cess and public works cess is not a claim for money on a bond or other contract, but is a claim created and made recoverable by a special enactment of the Legislature, and does not fall within the provisions of s. 6 of the mofussil Small Cause Court Act. DAVID *v.* GRISH CHUNDER GUHA . I. L. R., 9 Calc., 183 : 11 C. L. R., 305

52. ———— *Act XI of 1865—Jurisdiction — Water-cess — Payment by landholder—Implied contract by tenant to recoup.*—If a landholder pays to Government water-cess which his tenant is legally bound to pay, a Small Cause Court, constituted under Act XI of 1865, has jurisdiction to decide a suit brought by the landholder against the tenant to recover the amount so paid by the landholder. VENKATRAMAYA *v.* VIRAYA

[I. L. R., 8 Mad., 4

53. ———— Claim to property seized in execution—*Act XI of 1865, s. 6—Title, Question of.*—A Small Cause Court had no jurisdiction to entertain a suit by a decree-holder to establish his judgment-debtor's title to property seized in execution which had subsequently been released to a claimant under s. 246, Act VIII of 1859, and to recover the value of the property from the successful claimant. RAM DHUN BISWAS *v.* KEFAL BISWAS

[1 B. L. R., S. N., 10 : 10 W. R., 141

54. ———— *Suit to establish right to personal property and to recover value of it.*—A suit on the part of an unsuccessful claimant to establish his right to personal property and to recover the value of the same is not cognizable by a Small Cause Court. MOOZDEEN GAZEE *v.* DINOBUNDHOO GOSSAMEE . . . . . 13 W. R., 99

This latter case is not to be taken as extending the rule laid down in *Ram Dhun Biswas* v. *Kefal Biswas, 1 B. L. R., S. N., 10,* in suits by unsuccessful claimants under s. 246, Act VIII of 1859. PUNJU *v.* OODOY . . . . . . 18 W. R., 337

See WOOMESH CHUNDER BOSE *v.* MUDDUN MOHUN SIRCAR . . . . . . 2 W. R., 44

and ANONYMOUS . . 2 W. R., S. C. C. Ref., 5

55. ———— *Civil Procedure Code, 1877—Owner to recover moveable property under R500.*—The plaintiff was owner of moveable property attached in execution of a decree, and, his claim to such property having been rejected under s. 246 of Act VIII of 1859, he brought this suit to recover possession. *Held* that the suit was cognizable by a Mofussil Court of Small Causes. *Quære*—Whether the new Civil Procedure Code (Act X of 1877) prevents or allows a suit, like the present, to be brought in a Court of Small Causes. NATHU GANESH *v.* KALIDAS UMED . I. L. R., 2 Bom., 365

56. ———— *Suit to establish right to property attached under decree—Jurisdiction—Civil Procedure Code, 1877, s. 283—Act XI of 1865, s. 12.*—A suit brought by a defeated claimant, under s. 283 of Act X of 1877, to establish his right to, and to recover possession of, certain moveable property attached in execution of a decree of a Small Cause Court is within the jurisdiction of, and must therefore, under Act XI of 1865, s. 12, be instituted in, a Small Cause Court. GORDHAN PEMA *v.* KASANDAS BALMUKUNDAS I. L. R., 3 Bom., 179

57. ———— *Attachment of moveable property—Suit to establish right—Civil Procedure Code, s. 283.*—A suit under s. 283 of the Civil Procedure Code by a party against whom an order under s. 281 has been passed to establish his right to moveable property attached in execution of a decree passed by a Civil Court, and for such property, the same being less than R500 in value, is not a suit cognizable in a Court of Small Causes. ILAHI BUKSH *v.* SITA . . . I. L. R., 5 All., 462

58. ———— *Claim for personal property and to set aside order disallowing objection to its attachment—Jurisdiction—Act XI of 1885, s. 6.*—A suit to recover moveable property attached in execution of a decree and damages for its wrongful attachment, and to set aside the order disallowing an objection to its attachment, is not a suit cognizable in a Court of Small Causes. MUKAND LAL *v.* NASIRUD-DIN . . I. L. R., 4 All., 416

59. ———— *Suit for personal property—Suit to establish right—Civil Procedure Code, s. 283—Act XI of 1865, s. 6.*—A person who had claimed moveable property attached in execution of a decree as his own, and whose claim had been investigated and disallowed under ss. 278 to 281 of the

2. JURISDICTION—*continued.*

I L R, 4 Bom, 503; Balkrishna v. Kisansing I. L. R, 4 Bom, 505 note; and Radha Kishen v Choley Lall, 3 N. W, 155, dissented from GODHA v NAIK RAM . . I. L. R., 7 All., 152

60. ———— *Suit to recover moveable property wrongly attached—Suit to set aside order of Munsif*—A suit brought by an owner to recover moveable property of which he has been

KISHEN v CHOTEY LALL . . 3 N. W., 100

BALMOKUND v. LEKHRAJ . 3 N. W., 156 note

61. ———— *Suit to establish right to personal property seized in execution of decree*—A suit to establish the plaintiff's right to the exclusive possession of personal property, of which the plaintiff and her husband had been dispossessed by actual seizure in execution of a decree against the plaintiff's husband, is cognizable by a Small Cause Court. JANAKIAMMAL v. VITHENADIEN

[5 Mad., 101

62. ———— *Act XI of 1865, s. 6—Suit as to title to property taken in execution.*—A suit brought by a decree-holder to have it decided whether moveable property taken in execution is or is not the property of his judgment-debtor is not a suit cognizable by a Court of Small Causes. JETHABHAI BHAICHAND v. BAI LAKHU

[6 Bom., A. C., 27

63. ———— *Personal property—Suit by decree-holder.*—A suit by a decree-holder to establish his right to attach and sell moveable property as belonging to his judgment debtor is not a suit for personal property within the meaning of s. 6 of Act XI of 1865, and a mofussil Court of Small Causes has no jurisdiction to entertain it, even

2. JURISDICTION—*continued.*

though the value of the property be such as to fall within its pecuniary limit. CHHAGANLAL NAGARDAS v. JESHAN RAV DALSUKHRAM

[I. L. R., 4 Bom., 503

BALKRISHNA v KISANSING

[I. L. R., 4 Bom., 505 note

64. ————
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perty, and fell within the ruling in *Chhaganlal Nagardas v. Jeshan Rav Dalsukhram, I L R, 4 Bom, 503* PAGI PARTAP HAMIR v VARAJLAL MULCHAND . I. L. R., 8 Bom., 259

Cause decree passed by the Court of a Subordinate Judge, a claim thereto was preferred by *M* and rejected *M* then brought a suit in the District

KOYA v. KASMI . . I. L. R, 9 Mad., 206

66 ———— *Civil Procedure Code (Act X of 1877), ss 280, 281, and 283—Goods sold under execution*—S 283 of the Civil Procedure Code enables a party, against whom an order has been made in execution proceedings, to bring a suit to establish his rights, whatever they may be; but it says nothing as to the nature of the suit or the Court in which it is to be brought Whether the party is

the goods or their value will lie in a Small Cause

ment-debtor parties to the suit and requires a declaration of his right to the property, such a suit will not lie in the Small Cause Court. SHIBOO NARAIN SINGH v. MUDDEN ALLY. NATABAR NANDI v. KALIDASS PALI

[I. L. R., 7 Calc., 608: 9 C. L. R., 8

67. ———— *Suit for value of sheep wrongly attached and sold in execution of decree.*—Where plaintiffs' sheep had been attached in

2. JURISDICTION—*continued.*

satisfaction of a decree against a third party, and the second defendant had purchased the property at the Court sale,—*Held* that a suit merely to recover the sheep or their value is cognizable by a Small Cause Court. KUNDEME NAINE BOOCHE NAIDOO *v.* RAVOO LUTCHMEEPATY NAIDOO . . 8 Mad., 36

68. ——— *Suit for property wrongly seized in execution—Civil Procedure Code (Act XIV of 1882), ss. 278-283—Attachment of same property in execution of decrees obtained by different creditors—Claim made in one suit to attached property under s. 278—Order made under s. 281—Suit by claimant to establish right.*—The first and second defendants obtained a decree in suit No. 1548 of 1897 against *R*, described as the owner of the Wahalan Mills, and attached property on the mill premises. Twelve other creditors also brought twelve other similar suits and obtained decrees against other persons, who were also described as owners of the Wahalan Mills, and attached the same property. In suit No. 1548 of 1897 *R M* (the present plaintiff), under s. 2 8 of the Civil Procedure Code, claimed the property. His claim was disallowed, and he was ordered to bring a suit under s. 283. No claim or order was made in the case of the other twelve suits. *R M* now sued in pursuance of the above order to recover his property, and he included as defendants not merely those defendants (Nos. 1 and 2) who had been plaintiffs in suit No. 1548 of 1897, but also those who had been plaintiffs in the twelve other suits, and who had attached the property in execution of their decrees. It was objected that no suit would lie against the latter, as in their suits no claim had been made to the goods which they had attached and no order made under s. 281, Civil Procedure Code. *Held* that the Court of Small Causes had jurisdiction to try the suit. In substance the suit was a suit for goods, though, as a matter of form, the decree might contain a declaration. A suit for the release of goods wrongfully seized is not a declaratory suit under s. 42 of the Specific Relief Act (I of 1877), that although the value of the property claimed by the plaintiff was admittedly over ₨2,000, the Court of Small Causes had jurisdiction. The plaintiff was entitled to abandon part of his claim. RAGHUNATH MUKUND *v.* SAROSH KAMA . . I. L. R., 23 Bom., 266

69. ——— Compensation for acquisition of land—*Provincial Small Cause Courts Act (IX of 1889), sch. II, arts. 11 and 14—Claim for compensation awarded under Land Acquisition Act—Interpleader suit—Civil Procedure Code (1882), ss. 470 and 622—Jurisdiction of Munsif—Superintendence of High Court.*—Land having been compulsorily acquired under the Land Acquisition Act for the purpose of the East Coast Railway, the compensation was fixed at ₨468. A conflict having arisen as to the right to receive the compensation, and the District Court having declined to determine it under Land Acquisition Act, s. 15, an interpleader suit was instituted on behalf of the Secretary of State in the Court of the District Munsif. The decision of the District Munsif having been confirmed on appeal, the unsuccessful claimant preferred a petition to the High Court under s. 622, Civil Procedure Code. *Held* that the interpleader suit was not within the jurisdiction of a Provincial Small Cause Court, and was rightly brought on the ordinary side of the District Munsif's Court, and consequently, where the petitioner's remedy was by way of second appeal, the petition for revision was not admissible. TIRUPATI RAJU *v.* VISSAM RAJU . I. L. R., 20 Mad., 155

70. ——— Contract—*Suit for breach of contract on failure to register.*—A suit to recover money paid as the price of land in consequence of vendor's failure to complete the bargain by registration of the deed of sale is maintainable in a Court of Small Causes, being substantially a suit for breach of contract for sale of land. CHAROO KHAN *v.* DOORGAMONEE . . . 9 W. R., 498

71. ——— *Suit for value of produce not paid under contract.*—Where a cultivator is a mere servant of the landlord, a suit for damages will lie against him in the Small Cause Court. If the cultivator is a tenant to whom the landlord has sub-let the land, a suit for non-fulfilment of his contract by the tenant will not lie in the Small Cause Court, but in the Revenue Courts under Act X of 1859. SREENATH DUTT *v.* DWARY DHALLIE . . . . 2 W. R., S. C. C. Ref., 2

72. ——— *Suit for payment in kind.*—A suit to recover a quantity of rice (or its value ₨300) in return for some paddy which had been taken by the defendant under contract was held to be cognizable by the Small Cause Court within the meaning of Act XXIII of 1861, s. 27. DOM KUMAR *v.* SOORJO DUTT SURMAH . 22 W. R., 259

73. ——— *Hindu son's liability for family debt.*—The manager of a Hindu family, having borrowed money for a proper and necessary purpose,—his son's marriage,—gave a bond to secure the debt. *Held* that a suit against the father and son to recover the money lent was cognizable by a Court of Small Causes under Act XI of 1865. PUNA KARUPPANA PILLAI *v.* VIRABADRA PILLAI . . . I. L. R., 6 Mad., 277

74. ——— *Suit against sons in undivided family to enforce debt incurred by father.*—A suit against the undivided sons of a deceased Hindu father to enforce payment of a debt incurred by the latter is within the jurisdiction of a Small Cause Court, and that jurisdiction is not ousted by a plea that the debt was contracted for immoral purposes. GOPAL KRISTNA SASTRI *v.* RAMAYYANGAR [I. L. R., 4 Mad., 236

75. ——— *Civil Procedure Code, s. 586—Mofussil Small Cause Courts Act (XI of 1865), s. 6—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt of living father.*—In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2 JURISDICTION—*continued.*

against the sons was bad NARASINGA *v.* SUBBA [I. L. R., 12 Mad., 139

76. ———— *Share of trees cut by tenants—Second appeal.*—A suit by a zamindar for one fourth of the price of trees cut by tenants is, when based upon contract, one of the nature cognizable in a Court of Small Causes, and consequently, where the amount claimed is under five hundred rupees, no second appeal lies in such a suit. The principle laid down in *Nanku v. Board of Revenue, I L R., 1 All., 444,* followed HARI SINGH *v.* LALDEO SINGH . I. L. R., 2 All., 905

77. ———— *Suit for share of*

a grove of mango trees held by such tenant, such amount being claimed in virtue of an agreement recorded in the wajib-ul urz, and not in virtue of any custom or right is not cognizable in the Revenue Court, but is cognizable in a Court of Small Causes, and consequently no second appeal in the suit will lie. SARNAM TEWARI *v.* SAKINA BIBI [I. L. R., 3 All., 37

78. ———— *Act X of 1859, s 10—Suit for share of value of crops*—The plaintiff as burghadar, to whom the defendant had sub let his jote land, for the purpose of raising crops of kalai, under a contract to share the produce between themselves, sought to recover from the defendant R7-1 as the value of his share of the crops which he (the defendant) appropriated to his own use The defendant denied the existence of any such contract, and contended that an action of this nature would lie

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GARIBULLA PARAMANICK *v.* FAKIR MAHOMED KOLU [1 B. L. R., S. N., 13: 10 W R., 203

79 ———— *Suit on contract.*—Plaintiffs, having obtained a sum from defendants on a loan, let certain land to them in ijara for a term of years on condition that the latter, after realizing rents from the ryots, would give credit on account of interest on the said loan, pay rent due to plaintiff's landlord, and pay the balance to plaintiffs. Having failed in the engagements, defendants were sued in the Small Cause Court. *Held* that the suit was a suit on a contract, and was cognizable by the Small Cause Court. NOBIN CHUNDER VOIRO *v.* KEDAR NATH CHUCKERBUTTY . . 10 W. R., 228

SMALL CAUSE COURT, MOFUSSIL —*continued*

2. JURISDICTION—*continued*

80. ———— *Suit against co-contractor—Suit for money due on a contract*—Plaintiff, defendant, and another party had jointly

contingency of the Government incurring expense in case of failure on the part of the contractors. The contract was completed by one of the contractors,

[15 W. R., 513

LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN [18 W. R., 104

82. ———— *Suit to recover share in varshasan—Claim on implied contract*—Suit to recover a share in a varshasan payable by the

of the plaintiff *Sunkur Lall Pittuck Gyawal v Ram Kalee Dhamin, 18 W R., 104,* followed. *Keshav Bhat v Bhagirthi Bai, 3 Bom., A. C 75,* overruled. RATAN SHANKAR REVASHANKAR *v.* GULAB SHANKAR LALSHANKAR . . 10 Bom., 21

See BHIMRAV JIVAJI *v.* BHIMRAV GOVIND [11 Bom., 194

83 ———— *Suit to recover share of annual allowance*—A suit to recover a share of arrears of a varshasan or annual allowance paid by the Gaekwar of Baroda to the defendant in which the plaintiff alleged he was entitled to a third share is maintainable in a Court of Small Causes RATANSHANKAR REVA SHANKAR *v.* GULABSHANKAR LALSHANKAR . . 1 Bom., A. C., 173

84. ———— *Act XI of 1865, s 6—Suit to recover arrears of annuity from endowed property*—In a suit by a widow of one of the descendants of the grantee of a varshasan or annual allowance paid from the Government treasury for the performance of religious service in a Hindu temple to recover arrears due to her husband's branch

of the family from another descendant who had received the whole stipend,—*Held* that this was not a suit for money due on a contract or "for personal property or otherwise" within the meaning of s. 6 of Act XI of 1865, cognizable by a Court of Small Causes in the mofussil. KESHAVBHAT *v.* BHAGIRTHIBAI [3 Bom., A. C., 75

85. ——— *Act XI of 1865, s. 6—Suit for money borrowed by servant on understanding it would be repaid by master.*—A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt and partly taken by the latter and spent for his own private purposes. No re-payment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money. *Held* that there was a legal presumption that the money was advanced on account of the defendant on the understanding that it would be repaid; and that the action was one for debt within the meaning of s. 6 of the Small Cause Courts Act XI of 1865. RASH MONEE DEBIA *v.* RAJARAM SIRCAR [15 W. R., 86

86. ——— *Act XI of 1865, s. 6—Suit for money on implied contract.*—Plaintiff took a lease from defendant, and a bakijai setting forth a certain sum (R473-10) as due from the tenants on account of rent, and on the faith of the bakijai paid that sum to the defendant. He then sued the tenants for the same, and was met with pleas either of payment to the defendant or of payments by assignment for the defendant's debts. He then sued defendant for a refund. *Held* that the claim was for money due under an implied contract for the repayment of a sum under R500, and cognizable by a Small Cause Court under Act XI of 1865, s. 6, cl. 4. WUZEER MULLICK SIRCAR *v.* NITUMBINEE DEBEE [18 W. R., 484

87. ——— *Implied contract—Contract to indemnify against claim of superior landlord.*—If *A* buys a tenure at a public auction benami in the name of *B*, he impliedly contracts to indemnify *B* against the claims of the superior landlord, and a suit by *B* against *A* to recover the amount of a decree obtained against him by the superior landlord will lie in a Small Cause Court. KADARESSUR MOOKERJEA *v.* GOOROO CHURN MOOKERJEA [2 C. L. R., 388

88. ——— *Second appeal—Relation resembling contract—Contract Act, s. 70—Act XI of 1865, s. 6.*—On the death of *K*, a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874 *N*, who was not one of her heirs and who was not a shareholder in such village, was recorded in the revenue register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of *B*, who was one of the heirs, was recorded as proprietor. In a suit by *N* against *B* to recover R70, being the amount he had paid on account of revenue in respect of such share for the period between January 1874 and February 1878,—*Held* that the suit was one for damages under s. 70 of Act IX of 1872 within the meaning of s. 6 of Act XI of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie. NATH PRASAD *v.* BAIJ NATH . I. L. R., 3 All., 66

89. ——— *Payment of revenue by a person for another—Suit for reimbursement.*—A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is, where the amount of such payment does not exceed R500, a suit of the nature cognizable in a Mofussil Court of Small Causes. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* followed. QUTUB HUSAIN *v.* ABUL HASAN . . I. L. R., 4 All., 134

90. ——— *Relations resembling contract—Act IX of 1872 (Contract Act), ss. 69, 70—Payment of land revenue—Act XI of 1865, s. 6.*—The plaintiffs purchased land belonging to the defendant at an execution-sale, at which it was notified that arrears of revenue were due in respect of the land. The plaintiffs paid such arrears, and also the arrears which had accrued in the period between the sale and the date the plaintiffs obtained possession. They then sued the defendant in the Munsif's Court to recover the amount they had paid. *Held* that, with reference to the principle laid down in *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* the suit should have been instituted in the Court of Small Causes. IN THE MATTER OF THE PETITION OF ALI MAZHAR . . . I. L. R., 4 All., 152

91. ——— *Contract Act (IX of 1872), ss. 69, 70—Small Cause Court Act (XI of 1865), s. 6—Patni rent—Implied contract.*—The plaintiff, a purchaser in execution of a patni right, brought a suit in a Munsif's Court to recover from the defendant, a former holder of the patni right, a sum of money which she had been compelled to pay to the zamindar for rent which had accrued due prior to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court,—*Held* that, assuming the suit to lie independently of any express promise, it was one cognizable by a Court of Small Causes, and no appeal would therefore lie. *Rambux Chittangeo* v. *Modhoosoodun Paul Chowdhry, B. L. R., Sup. Vol., 675 : 7 W. R., 377,* distinguished. Cases falling within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* approved. KRISHNO KAMINI CHOWDHRANI *v.* GOPI MOHUN GHOSE HAZRA [I. L. R., 15 Calc., 652

92. ——— *Provincial Small Cause Courts Act, sch. II, art. 41—Civil Procedure Code, s. 586—Suit for contribution—Joint property—Suit relating to contract—Contract Act, s. 69.*—Lands of which part belonged to the plaintiffs and

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

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[I. L. R., 13 Mad., 349

93. ——— Contribution—*Suit for contribution*—A Small Cause Court has no jurisdiction to try a suit for contribution TAMIZUDDIN MIRDHA *v* GAFFUR KHAN . 7 B. L. R., Ap., 40

[illegible]

675: 7 W. R., 577. BHATOO SINGH *v* RAMOO MAHTON . . . I. L. R., 23 Calc., 189

95. ——— *Suit for contribution where there is no contract.*—A suit for contribution, where there is no contract, express or implied, cannot be entertained by a Small Cause Court SHEEPUTTY ROY *v.* LOHARAM ROY

[B. L. R., Sup. Vol., 687: 7 W. R., 384

ITCHA MOYEE DOSSEE *v.* BAMA SOONDUREE DOSSEE . . . . 25 W. R., 73

96. ——— *Suit against co-sharer for money recovered on joint decree*—A suit against a co sharer for a sum of money recovered by the plaintiff upon a decree which was joint property may be brought in a Small Cause Court. HURO MOHUN ROY *v.* KHETTRO MONEE DOSSEE

[12 W. R., 372

97. ——— *Suit for contribution under joint decree—Act XI of 1865, s. 6*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution The meaning of the word "contract" in s. 6, Act XI of 1865, considered. GOVINDA MONEYA TIRUYAN *v.* BAPU

[5 Mad., 200

98. ——— *Decree against several* [illegible] suit f [illegible] in res [illegible] defen [illegible] former [illegible] cogniza [illegible] deal with questions of equity. A second appeal will therefore lie in such a suit. *Ramlux Chittangeo v. Modhoosoodun Paul Chowdhry, B. L. R., Sup. Vol., 675,* followed. *Nath Prasad* v. *Baij Nath,* *I. L. R., 3 All., 66,* distinguished. FUTTEH ALI *v.* GUNGANATH ROY

[I. L. R., 8 Calc., 113: 10 C. L. R., 20

[illegible] be entertained by a Court of Small Causes. *Ramlux Chittangeo* v *Modhoosoodun Paul Chowdhry, B. L. R., Sup Vol., 675: 7 W. R., 411; Shaboo Majee v. Noorai Mollah, B. L. R., Sup Vol., 691,* followed *Nath Prasad* v *Baij Nath, I. L. R., 3 All., 66,* dissented from. RAMJOY SURMA *v* JOYNATH SURMA I. L. R., 9 Calc., 395: 12 C. L. R., 314

100. ——— *Suit to recover a share of money recovered by co plaintiff under a decree—Act XI of 1865 (Mofussil Small Cause Courts Act), s 6*—*Held* that a suit to recover a share of money which had been recovered by a co-plaintiff under a decree was a claim for money due on a contract within the meaning of s 6 of the Mofussil Small Cause Courts Act (XI of 1865), and was therefore a suit of the nature cognizable by a Court of Small Causes in which, under s 586 of the Civil Procedure Code, no second appeal could lie DEBI DAS *v* LACHMAN SINGH I. L. R., 7 All., 896

101. ——— *Hindu law*—

[illegible] for contribution, such suit could not be brought by the plaintiff against the defendant under the circumstances of the case. CHELLAPILLA RAU PANTULU *v* BALARAMAKRISHNAMA PANTULU

[I. L. R., 6 Mad., 424

102. ——— *Agency—Recovery on joint decree*—Plaintiff and defendant having been co-sharers in a decree in which the respective shares of the decree-holders were definitely fixed, defendant amicably received from the judgment-debtor his own share and plaintiff's share on her behalf The latter brought the present suit to recover the same from defendant, whose plea was that the amount had been paid to the plaintiff. *Held* that, if defendant acted as agent of the plaintiff, there was a contract implied between them that the former would recover what was due from the latter, and pay it over or account for it to her, and that therefore the case came within the jurisdiction of the Small Cause Court. *Held* that, as the subordinate Judge before whom the case came in appeal was also Small Cause Court Judge, he might have dealt with the case without referring the above point for the decision of the High Court. SHUMBHOONATH MOJOOMDAR *v* KASHEESSUREE DEBEE . . . . . . 13 W. R., 100

2. JURISDICTION—*continued.*

of the family from another descendant who had received the whole stipend,—*Held* that this was not a suit for money due on a contract or "for personal property or otherwise" within the meaning of s. 6 of Act XI of 1865, cognizable by a Court of Small Causes in the mofussil. KESHAVBHAT *v.* BHAGIRTHIBAI [3 Bom., A. C., 75

85. ———— *Act XI of 1865, s. 6—Suit for money borrowed by servant on understanding it would be repaid by master.*—A servant borrowed on account of his master a sum of money which was partly spent in satisfaction of his master's debt and partly taken by the latter and spent for his own private purposes. No re-payment having been made by the master, the lenders took out a decree against the servant, who then sued the master to recover the money. *Held* that there was a legal presumption that the money was advanced on account of the defendant on the understanding that it would be repaid; and that the action was one for debt within the meaning of s. 6 of the Small Cause Courts Act XI of 1865. RASH MONEE DEBIA *v.* RAJARAM SIRCAR [15 W. R., 86

86. ———— *Act XI of 1865, s. 6—Suit for money on implied contract.*—Plaintiff took a lease from defendant, and a bakijai setting forth a certain sum (R473-10) as due from the tenants on account of rent, and on the faith of the bakijai paid that sum to the defendant. He then sued the tenants for the same, and was met with pleas either of payment to the defendant or of payments by assignment for the defendant's debts. He then sued defendant for a refund. *Held* that the claim was for money due under an implied contract for the repayment of a sum under R500, and cognizable by a Small Cause Court under Act XI of 1865, s. 6, cl. 4. WUZEER MULLICK SIRCAR *v.* NITUMBINEE DEBEE [18 W. R., 484

87. ———— *Implied contract —Contract to indemnify against claim of superior landlord.*—If *A* buys a tenure at a public auction benami in the name of *B*, he impliedly contracts to indemnify *B* against the claims of the superior landlord, and a suit by *B* against *A* to recover the amount of a decree obtained against him by the superior landlord will lie in a Small Cause Court. KADARESSUR MOOKERJEA *v.* GOOROO CHURN MOOKERJEA [2 C. L. R., 388

88. ———— *Second appeal—Relation resembling contract—Contract Act, s. 70 —Act XI of 1865, s. 6.*—On the death of *K*, a dispute arose among her heirs as to the succession to the share of a village of which she was the recorded proprietor. In January 1874 *N*, who was not one of her heirs and who was not a shareholder in such village, was recorded in the revenue register as lambardar in respect of her share, and was so recorded until February 1878, when his name was expunged and the name of *B*, who was one of the heirs, was recorded as proprietor. In a suit by *N* against *B* to recover R70, being the amount he had paid on account of revenue in respect of such share for the period between January 1874 and February 1878,—*Held* that the suit was one for damages under s. 70 of Act IX of 1872 within the meaning of s. 6 of Act XI of 1865, and accordingly of the nature cognizable in a Court of Small Causes, and no second appeal in the suit would lie. NATH PRASAD *v.* BAIJ NATH . I. L. R., 3 All., 66

89. ———— *Payment of revenue by a person for another—Suit for reimbursement.*—A suit by the proprietor of one village who has been compelled to pay the revenue payable by the proprietor of another village for reimbursement is, where the amount of such payment does not exceed R500, a suit of the nature cognizable in a Mofussil Court of Small Causes. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* followed. QUTUB HUSAIN *v.* ABUL HASAN . . I. L. R., 4 All., 134

90. ———— *Relations resembling contract—Act IX of 1872 (Contract Act), ss. 69, 70—Payment of land revenue—Act XI of 1865, s. 6.*—The plaintiffs purchased land belonging to the defendant at an execution-sale, at which it was notified that arrears of revenue were due in respect of the land. The plaintiffs paid such arrears, and also the arrears which had accrued in the period between the sale and the date the plaintiffs obtained possession. They then sued the defendant in the Munsif's Court to recover the amount they had paid. *Held* that, with reference to the principle laid down in *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* the suit should have been instituted in the Court of Small Causes. IN THE MATTER OF THE PETITION OF ALI MAZHAR . . . I. L. R., 4 All., 152

91. ———— *Contract Act (IX of 1872), ss. 69, 70—Small Cause Court Act (XI of 1865), s. 6—Patni rent—Implied contract.*—The plaintiff, a purchaser in execution of a patni right, brought a suit in a Munsif's Court to recover from the defendant, a former holder of the patni right, a sum of money which she had been compelled to pay to the zamindar for rent which had accrued due prior to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court,—*Held* that, assuming the suit to lie independently of any express promise, it was one cognizable by a Court of Small Causes, and no appeal would therefore lie. *Rambux Chittangeo* v. *Modhoosoodun Paul Chowdhry, B. L. R., Sup. Vol., 675 : 7 W. R., 377,* distinguished. Cases falling within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66,* approved. KRISHNO KAMINI CHOWDHRANI *v.* GOPI MOHUN GHOSE HAZRA [I. L. R., 15 Calc., 652

92. ———— *Provincial Small Cause Courts Act, sch. II, art. 41—Civil Procedure Code, s. 586—Suit for contribution—Joint property —Suit relating to contract—Contract Act, s. 69. —*Lands of which part belonged to the plaintiffs and

SMALL CAUSE COURT, MOFUSSIL —*continued*

2. JURISDICTION—*continued.*

v *Gopi Mohun Ghose Hazra, I L. R, 15 Calc, 652,* followed. SRINIVASA v. SIVAKOLUNDU, [I. L. R., 12 Mad., 349

93. ———— Contribution—*Suit for contribution*—A Small Cause Court has no jurisdiction to try a suit for contribution TAMIZUDDIN MIRDHA v GAFFUR KHAN . 7 B. L. R., Ap, 40

675 7 W. R, 577 BHATOO SINGH v RAMOO MAHTON . . I. L. R., 23 Calc, 189

PUTTY ROY v LOHARAM ROY [B. L. R, Sup. Vol., 687: 7 W. R, 384

ITCHA MOYEE DOSSEE v. BAMA SOONDUREE DOSSEE . . . 25 W. R., 73

may be brought in a Small Cause Court. HURO MOHUN ROY v KHETTRO MONEE DOSSEE [12 W, R, 372

97. ———— *Suit for contribution under joint decree—Act XI of 1865, s 6.*—A Small Cause Court has jurisdiction to entertain a suit by one of several debtors against whom a decree for rent had been enforced against his co-debtors for contribution The meaning of the word "contract" in s 6, Act XI of 1865, considered. GOVINDA MONEYA TIRUYAN v BAPU [5 Mad., 200

98 ———— *Decree against several defendants jointly—Second appeal.*—A suit for contribution not founded upon contract, but in respect of money for which the plaintiff and the defendants in the contribution suit had been by a former decree made jointly liable, is not within the cognizance of a Court of Small Causes, which cannot deal with questions of equity. A second appeal will therefore lie in such a suit *Ramlex Chittangeo v. Modhoosoodun Paul Chowdhry, B. L. R., Sup. Vol, 675,* followed *Nath Prasad v. Baij Nath,*

SMALL CAUSE COURT, MOFUSSIL —*continued*

2. JURISDICTION—*continued.*

I. L R, 3 All, 66, distinguished. FUTTEH ALI v. GUNGANATH ROY [I. L. R., 8 Calc, 113: 10 C. L. R., 20

99. ———— *Money paid in satisfaction of joint decree.*—A suit for contribution for money paid by one judgment-debtor in satisfaction of a joint decree against him and others cannot be entertained by a Court of Small Causes. *Rambux Chittangeo v Modhoosoodun Paul Chowdhry, B L. R., Sup Vol, 675: 7 W. R, 411, Shaboo Majee v Noorai Mollah, B L R., Sup. Vol, 691,* followed *Nath Prasad v. Baij Nath, I. L R, 3 All, 66,* dissented from RAMJOY SURMA v JOYNATH SURMA I. L. R., 9 Calc, 395: 12 C. L. R., 314

100. ———— *Suit to recover a share of money recovered by co plaintiff under a decree—Act XI of 1865 (Mofussil Small Cause Courts Act), s 6*—*Held* that a suit to recover a share of money which had been recovered by a co-plaintiff under a decree was a claim for money due on a contract within the meaning of s 6 of the Mofussil Small Cause Courts Act (XI of 1865), and was therefore a suit of the nature cognizable by a Court of Small Causes in which, under s 586 of the Civil Procedure Code, no second appeal could lie DEBI DAS v LACHMAN SINGH I. L. R., 7 All., 896

101. ———— *Hindu law*—

the plaintiff, a suit was brought by him in a Small Cause Court for contribution against the defendant. *Held* that, although that Court could entertain a suit for contribution, such suit could not be brought by the plaintiff against the defendant under the circumstances of the case. CHELLAPILLA RAU PANTULU v BALARAMAKRISHNAMA PANTULU [I. L. R., 6 Mad., 424

102. ———— *Agency—Recovery on joint decree*—Plaintiff and defendant having been co-sharers in a decree in which the respective shares of the decree-holders were definitely fixed, defendant amicably received from the judgment-debtor his own share and plaintiff's share on her behalf. The latter brought the present suit to recover the same from defendant, whose plea was that the amount had been paid to the plaintiff *Held* that, if defendant acted as agent of the plaintiff, there was a contract implied between them that the former would recover what was due from the latter, and pay it over or account for it to her, and that therefore the case came within the jurisdiction of the Small Cause Court. *Held* that, as the subordinate Judge before whom the case came in appeal was also Small Cause Court Judge he might have dealt with the case without referring the above point for the decision of the High Court. [illegible] MOZOOMDAR v [illegible] 13 W. R., 100

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

103. ——— *Suit against co-sharer for contribution in respect of Government revenue.*—A suit by a co-sharer for contribution in respect of Government revenue paid by him in excess of his quota is not cognizable by a Small Cause Court, as the extent of the share in respect of which contribution is sought cannot be determined without deciding a question of title. KALEE NATH ROY *v.* NILA RAM PURAMANICK . **7 W. R., 32**

104. ——— *Suit for contribution in respect of money paid as revenue to save estate from sale.*—A claim for money below R500 paid as revenue by one partner in an estate on account of another in order to save the estate from sale is due under an implied contract between them, and is therefore cognizable by a Small Cause Court. RAM MONEY DOSSIA *v.* PEARY MOHUN MOZOOMDAR **[6 W. R., 325**

105. ——— *Suit to recover arrears of revenue compulsorily paid.*—A suit to recover arrears of revenue which the plaintiff was compelled to pay by the revenue authorities, but which the defendant was liable to pay, is cognizable by a Court of Small Causes. PARASURAMA CHEDUMBRAIYAN *v.* KRISTNAIYAN . . **5 Mad., 462**

106. ——— *Suit by co-sharer for contribution to Government revenue.*—A suit by a co-sharer for contribution in respect of arrears of revenue paid by him in excess of his quota to save the entire estate from sale is not cognizable by a Small Cause Court. BROMMOROOP GOSWAMEE *v.* PRANNATH CHOWDRY . . **7 W. R., 17**

107. ——— *Suit for contribution by co-sharer who has paid whole Government revenue.*—Where one of several co-sharers in an estate paying revenue to Government has paid the revenue due upon the whole estate to prevent it from being sold, a Small Cause Court has no jurisdiction to entertain a suit brought by him against the other co-sharers for contribution. RAMBUX CHITTANGEO *v.* MODHOOSOODUN PAUL CHOWDHRY **[B. L. R., Sup. Vol., 675 2 Ind. Jur., N. S., 155 : 7 W. R., 377**

MODHOOSOODUN MOZOOMDAR *v.* BINDOBASHINY DOSSEE . . . **6 W. R., Civ. Ref., 15**

108. ——— *Suit for contribution—Co-sharers.*—No suit for contribution between co-parceners in a revenue-paying estate, or for contribution between co-parceners in a jumma, will lie in the Small Cause Court. NOBIN KRISHNA CHAKRAVATI *v.* RAM KUMAR CHAKRAVATI. BUNNIJAN BIBI *v.* MAHAMMAD HOSSAIN **[I. L. R., 7 Calc., 605 : 9 C. L. R., 90**

109. ——— *Suit for share of revenue paid by mortgagee.*—A suit by a mortgagee to compel a mortgagor to repay him the amount of Government assessment, which he has been compelled to pay when in occupation of the mortgaged property, is an obligation in equity to repay, and is not cognizable by a Court of Small Causes. VITHOBA BIN KESHAVSHET *v.* SHABAJIRAV **[5 Bom., A. C., 122**

110. ——— *Suit to recover money paid to co-sharers as excess of rent.*—A suit to recover money alleged to have been paid in excess of plaintiff's share of rent on account of his co-tenant was held to be a suit for contribution, and as such not cognizable by the Small Cause Court. PITAMBUR CHUCKERBUTTY *v.* BHYRUBNATH PALEET **[15 W. R., 52**

111. ——— *Suit cognizable by Revenue Court—Suit to recover money paid to prevent sale for arrears of rent.*—The plaintiff sued to recover money paid in order to prevent his land from being sold at the instance of the defendant for non-payment of arrears of rent under Madras Act VIII of 1865, the plaintiff's allegation being that no rent was due to the defendant. *Held* that the Small Cause Court had no jurisdiction, because the suit was cognizable before a revenue officer. SHAUNKARA SUBBIEN *v.* VELLAYAN CHETTY **5 Mad., 179**

112. ——— *Suit by surety against principal for recovery of money paid on his account—Suit for contribution.*—A suit by a surety for recovery of a sum not exceeding R500, which he had to pay on account of his principal, is cognizable by a Small Cause Court. A suit for contribution is not cognizable by a Small Cause Court, unless there is a contract, express or implied, between the parties. SHABOO MAJEE *v.* NOORAI MOLLAH. JONKEP *v.* NABOO. BHARUT CHUNDER DUTT *v.* DENGAR GOPE **[B. L. R., Sup. Vol., 691 : 7 W. R., 386**

113. ——— *Suit by one surety against another for contribution—Act XI of 1865, s. 6.*—A suit by one surety against another for contribution, where the sureties are bound by the same instrument, is a suit on an implied contract, and therefore within the jurisdiction of a Court of Small Causes. *Govinda Muneya Tiruyan* v. *Bapu*, *5 Mad., 200,* and *Ratan Shankar* v. *Gulabshankar*, *10 Bom., 21,* followed. HARI TRIMBAK *v.* ABASAHEB **[I. L. R., 4 Bom., 321**

114. ——— *Provincial Small Cause Court Act (IX of 1887), sch. II, arts. 2, 41, 42, and 44—Suit for costs paid by one of two persons jointly liable*—*N C* granted a lease of three plots of land to *B S*. The heirs of the former lessee brought a suit against *N C* and *B S* to recover possession of the same three plots of land. The suit was decreed with costs; and the costs, amounting to R80 and annas 5, were recovered from *B S* alone. Thereupon *B S* brought this suit against *N C* in the Court of Small Causes at Pubna for the recovery of that amount. *Held* that the suit was one which did not come under art. 2, 41, 42, or 44 of sch. II, Act IX of 1887, and was cognizable by the Small Cause Court. BISVA NATH SHAH *v.* NABA KUMAR CHOWDHARY **[I. L. R., 15 Calc., 713**

SMALL CAUSE COURT, MOFUSSIL —*continued*

2 JURISDICTION—*continued*

115 ———— *Suit for share of costs of repairs of channel—Provincial Small Cause Courts Act (IX of 1887), s 15, and sch II, art 41*—The plaintiff sued to recover from the defendant R227, being his share of the cost of repairing a channel which was the property of the plaintiff and defendant *Held* the suit was cognizable by a Court of Small Causes FISCHER v TURNER

[I. L. R., 15 Mad, 155

116 ———— Copyright—*Jurisdiction of Presidency Small Cause Courts—Copyright Acts (XX of 1847 and XII of 1876), s 1—District Courts*—As the class of cases provided for by s 7 of the Copyright Act (XX of 1847) was transferred to the jurisdiction of the Calcutta Court of Small Causes by Act IX of 1850 notwithstanding the express language used in s 7 of the Copyright Act so by analogy the jurisdiction in the same class of [illegible]

[I. L. R, 6 Calc, 499 . 7 C L. R., 471

117. ———— Costs—*Suit for costs incurred in suit to compel registration of document*—An action lies in a Small Cause Court for recovery of costs incurred by the plaintiff in a suit to compel registration of a document CHENGUIVA RAYA MUDALI v THANGATCHI AMMAL 6 Mad, 192

118 ———— Crops—*Standing crops—Immoveable property—Suit for enforcement of lien—Provincial Small Cause Courts Act, sch II, art 6*—Standing crops are immoveable property in the sense of the General Clauses Consolidation Act (I of 1868) and of sch II cl [illegible] of the Provincial Small Cause Courts Act A Small Cause Court therefore is not competent to try a suit for enforcement of a lien in respect of standing crops CHEDA LAL v MULCHAND MINDAI v KUNDAN SINGH

[I. L. R., 14 All., 30

119 ———— *Act XI of 1865, s 6—Suit to establish right to crops on basis of title to land on which they are grown—Question of title*—A suit to establish the plaintiff's right to a standing crop on the basis of his title to the land is an ordinary civil suit and not a suit of a Small Cause Court nature [illegible] *York Ram, I L. R., 7 All, 152* and *Shiboo Narain Singh v Mahes Ally I L R 7 Calc. 609* cited on DAKSHAT DEBLA v DOLEGOBIND CHOWDHRY

[I. L. R., 21 Calc., 430

120 ———— Customary payments—*Proprietary due, Suit for* [illegible] proprietary due) not claimed as [illegible] contract but by custom payable [illegible] occupation of the land [illegible]

is not of a nature triable by a Small Cause Court EBRAHIM SAIB v NAGASAMI GURUKAL

[I L. R., 3 Mad., 9

121. ———— *Suit for inamdar for proprietary dues*—Suits for proprietary dues to which the inamdar, as the owner of the village lays claim, are not cognizable by a Court of Small Causes They are not paid as rent, nor are they claimed under any contract SUBRAMANIAN CHETTI v PRINCE OF ARCOT

[I. L. R., 2 Mad, 146

122. ———— *Suit for share of jujman's collections*—A suit for a share of the collections made from "jujmans" in return for spiritual instruction is not of the nature cognizable by a Court of Small Causes under Act XI of 1865 CHOONEE LALL v GOUREE SHUNKUR 1 Agra, 84

123 ———— Damages—*Act XI of 1865, s 6—Suit for damages for personal injury*—By s 6 of Act XI of 1865 suits to recover damages for personal injury cannot be brought in a Mofussil Small Cause Court unless actual pecuniary damage has resulted from the injury That section excludes from the jurisdiction of the Mofussil Small Cause Courts suits for defamation [illegible] and the like, where no actual pecuniary damage has been sustained by the plaintiff [illegible] measure of damages to be awarded [illegible] of some nicety, but does not [illegible] damages merely because, besides [illegible] loss sustained, the plaint asks [illegible] tional for loss of character or [illegible] DURGA PERSHAD v ASA [illegible]

[I. L. R., 5 Calc., [illegible]

124. ———— [illegible] —*Loss of reputation*—[illegible] damages have resulted from [illegible] for damages as a whole will [illegible] Court, even [illegible] loss of reputation [illegible] cognizable [illegible] v GUNGADHUR CHOWDHRY [illegible]

[illegible]

125 ———— [illegible]

[illegible] Mad., 274

[illegible] Provincial [illegible] Act (IX of 1887), sch. II, [illegible] for malicious prosecution [illegible] for dam[illegible] one [illegible] meaning of cl. 35 of sch. II of the Provincial Small Cause Courts Act [illegible] from the jurisdiction

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

of a Small Cause Court. MAHOMED ALI *v.* BAYAMA [I. L. R., 14 Bom., 100

127. ——— *Suit for damages for personal injury—Actual pecuniary damage.*—The plaintiff, in a suit for damages laid at R200, claimed R50 on account of medical expenses caused by an assault committed on him by the defendants, R50 as the costs of a criminal prosecution which he had brought against them, and R100 for injury to his reputation and feelings. *Held* that, inasmuch as part of the claim related to alleged actual pecuniary damage resulting from an alleged personal injury, the whole suit was, with reference to s. 6, prov. (3), of the Mofussil Small Cause Court Act (XI of 1865), of a nature cognizable by a Court of Small Causes, and that, under s. 586 of the Civil Procedure Code, no second appeal in such suit would lie. *Gunga Narain Moytro* v. *Gudadhur Chowdhry, 13 W. R., 434,* referred to. JIWA RAM SINGH *v.* BHOLA . . . I. L. R., 10 All., 49

128. ——— *Compensation for personal injury—Actual pecuniary damage.*—The plaintiff in a suit for compensation for malicious prosecution claimed R200 as compensation for the mental annoyance caused him by such prosecution and R25 the actual expense incurred by him in defending himself from the charge made against him. *Held*, with reference to s 6 (3) and s. 12 of Act XI of 1865, that, the suit being one for the recovery of damages on account of an alleged personal injury, from which actual pecuniary damage had resulted, it was cognizable and should have been instituted in the Court of Small Causes having local jurisdiction. *Gunga Narain Moytro* v. *Gudadhur Chowdhry, 13 W. R., 434,* and *Brojo Soondur* v. *Eshan Chunder Roy, 15 W. R., 179,* followed. DEBI SINGH *v.* HANUMAN UPADHYA [I. L. R., 3 All., 747

129. ——— *Act XI of 1865, s. 6—Suit for damage to crops.*—The term "damages" in s. 6 of Act XI of 1865 includes damages to crops, and a suit to recover damages for the wrongful reaping and carrying off the produce of certain fields is cognizable by a Court of Small Causes. DAUR SINHA *v.* RUGHNUNDUN SINHA [3 N. W., 101

130. ——— *Suit for value of produce carried off by defendant cultivating plaintiff's land without consent.*—A suit to recover the value of produce carried off without plaintiff's consent from his land, which had been forcibly retained in the cultivation of defendant No. 1, assisted by defendant No. 2, was held to be a suit not for rent, but for damages. KAROO KAHAR *v.* NAUBOO SINGH . . . 24 W. R., 380

131. ——— *Provincial Small Cause Courts Act (IX of 1887)—Suit for damages for the forcible cutting and carrying away of grass.*—Act IX of 1887 does not exclude from the jurisdiction of the Small Cause Court a suit for damages for the forcible cutting and carrying away of grass. *Sungram Singh* v. *Juggun Singh, 2 N. W. H. C., 18; Daur Sinha* v. *Rughnundun Sinha, 3 N. W. H. C., 101; Darma Ayyan* v. *Rajapa Ayyan, I. L. R., 2 Mad., 181;* and *Manappa Mudali* v. *McCarthy I. L. R., 3 Mad., 192,* referred to. KRISHNA PROSAD NAG *v.* MAIZUDDIN BISWAS . . I. L. R., 17 Calc., 707

132. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 31—Suit for profits of land.*—A suit to recover with interest from the date of suit R500, the value of crops alleged to have been illegally carried away by the defendant, while the plaintiff was in possession is not a suit for the profits of land within cl. 31 of sch. II of Act IX of 1887; such a suit is not excepted from the jurisdiction of the Small Cause Court under that Act. ANNAMALAI *v.* SUBRAMANYAN [I. L. R., 15 Mad., 298

133. ——— *Suit for damages for value of timber washed up and taken away by Government.*—Where a landowner sued for damages for the value of timber carried away by Government after being washed on to his estate and to have his right declared as against Government to all timber that in future might be washed on to his estate,—*Held* the suit was not one which was cognizable by a Court of Small Causes. CHUTTER LALL SINGH *v.* GOVERNMENT . . . 9 W. R., 97

134. ——— *Suit to recover value of fishing nets.*—The plaintiffs sued the defendants in the Small Cause Court to recover the value of certain nets, the property of the plaintiffs, of which the defendants had taken wrongful possession, and damages for the loss sustained by the plaintiffs, in that they were unable to carry on their business as fishermen by reason of the detention of their nets by the defendants. *Held* that the Small Cause Court had jurisdiction to entertain the suit. MADUTHAN *v.* SUBBIER . . . . 6 Mad., 34

135. ——— *Suit for damages for illegal attachment—Civil Procedure Code, 1859, ss. 81 and 88.*—Certain moveable properties, fishing nets, etc., having been attached under Act VIII of 1859, s. 81, the suit was eventually dismissed and costs awarded to the defendants, who thereupon sued the plaintiffs to recover damages sustained consequent on the attachment, *viz.*, first, for what could have been earned by means of the fishing nets, had they not been under attachment; and second, for injury suffered by the nets owing to carelessness and exposure. *Held* that the suit was properly cognizable in the Small Cause Court, and the Judge was at liberty to take into consideration both elements of damage. Such a suit would only be barred when compensation had been awarded under s. 88 of the Civil Procedure Code. GOBURDHUN MAJHEE *v.* BANEE CHUNDER DOSS . . 21 W. R., 375

136. ——— *Provincial Small Cause Courts Act (IX of 1887), s. 35—Suit for compensation for illegal attachment—Suit to recover*

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2 JURISDICTION—*continued*

money pa d in excess —The plaintiff sued to recover from his landlord a sum which the defendant had [illegible] due to him [illegible] *eld* that the [illegible] 'ause Court [illegible] 'HETTI

[I L. R, 21 Mad, 239

137. —— Suit for damages *for breaking wall* —In a suit for damages for breaking down and removing bricks from a wall, where defendant's plea was *bond fide* purchase for value from plaintiff's predecessor, and plaintiff replied that the sale was invalid, as one made by a Hindu [illegible]

[13 W R, 105

138. —— *Suit for damages for obstruction of watercourse—Provincial Small Cause Courts Act (IX of 1887), sch II, cl. 35 (i)—"Diversion," Meaning of* —If by obstruction the flow of water is diverted from a plaintiff's lands such obstruction amounts to "diversion" within the meaning of cl 35 (i) of sch II of Act IX of 1887, and a suit for damages for such obstruction will not lie in the Small Cause Court PERIA KARUPPAN *v.* PALANIVANDI

[I. L. R., 18 Mad., 28

139. —— *Suit for damages for injury caused by diversion of watercourse* [illegible]

Cause Court. Such a suit does not fall within the exception of art. 35 (i) of sch II to Act IX of 1887 IN RE HAUSAMBHAI ABDULABHAI

[I. L. R, 20 Bom, 283

140 —— *Suit for damages for omission to certify payments to the Court* —*Held* that a suit will lie in the Small Cause Court for damages sustained in consequence of decree-holder fraudulently omitting to certify to the Court the payments made by plaintiff in satisfaction of a decree out of Court, when there was a contract made that he should so certify them BHUGOBAN TANTEE *v.* GOBIND CHUNDER ROY . 9 W. R., 310

But unless there is actual damage, the suit should be dismissed MOHIM MUNDUL *v.* KALA CHAND NAEK . . 13 W. R., 147

141. —— *Suit to recover* [illegible]

[illegible] appeal lies. RAMGUTTY GANGOOLY *v.* KUHALEE PERSHAD GANGOOLY . . . 17 W. R., 446

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

142. —— *Suit to recover money paid for defendant—Act XI of 1865, s. 6* —A suit to recover money which plaintiff has paid for defendant is in the nature of a suit for damages, as described in s 6 of the Small Cause Court Act. GOPAL SURNOKAR *v.* GOYARAM SIRCAR

[13 W. R, 273

143 —— *Act XI of 1865, s 6—Suit for damages* —A suit to recover the price of the skin and flesh of an ox, brought by a Mahar [illegible]

Court of Small Causes KHANDU VALAD KERU *v.* TATIA VALAD VITHOBA 8 Bom, A C, 23

144 —— *Civil Procedure Code (1882), s 586—Suit for money paid and damages incurred by distraint of crops—Provincial Small Cause Courts Act (IX of 1887),* [illegible]

the defendants for rents due from persons other than the plaintiffs, and also for damages sustained on account of the distraint, is, so far as the claim relates to damages, a suit coming under cl (j), art 35 of the Provincial Small Cause Courts Act (IX of 1887), and is therefore not entirely a suit of the nature of a Small Cause Court suit S 586 of the Civil Procedure Code (1882) does not bar a second appeal in such a suit DEWAN ROY *v.* SUNDAR TEWARY

[I. L. R., 24 Calc., 163

145. —— *Code of Civil Procedure (1882), s. 586—Suit for compensation for use and occupation of land valued at less than R500—Provincial Small Cause Courts Act (IX of 1887), ss 15 and 23, sch II art 8* —A suit for compensation for money realized by the defendants from the actual occupants of land, who were stated to have been the plaintiff's tenants is a suit not for rent, but for damages of a nature cognizable by the Small Cause Court, therefore no second appeal lies to the High Court in such a suit valued at less than R500 notwithstanding that the plaint was returned by the Small Cause Court to be filed in the Civil Court under s 23 of the Provincial Small Cause Courts Act, on the ground that the suit involved a question of title *Mohesh Mahto v Piru, I L R, 2 Calc, 470,* and *Muttukaruppan v Sellan, I L R, 15 Mad, 98,* referred to. KALI KRISHNA TAGORE *v.* IZZATANNISSA KHATUN I. L. R., 24 Calc., 557

See MAKHAN LALL DUTTA *v.* GORIBULLAH SARDAR . I. L. R., 17 Calc., 541

SADA SHANKAR *v.* BRIJ MOHAN DAS

[I. L. R., 20 All., 480

VIRA PILLAI *v.* RANGASAMI PILLAI

[I L R., 23 Mad, 149

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

landed estate which had been charged with the payment thereof under an instrument to which the defendants had not been parties was held to be a personal action for damages within the meaning of Act XI of 1865, s. 6. BHUGOBUTTY CHURN RAJPAYE v. SHARODA PERSHAD SOOKUL [22 W. R., 298

147. ——— *Suit to recover as damages profits from service lands—Mad. Reg. VI of 1831, s. 3.*—A Small Cause Court has no jurisdiction to entertain a suit to recover damages claimed in respect of the profits which the plaintiff would have derived from service inam lands by reason of s. 3 of Reg. VI of 1831. TOPPYA PILLAY v. PEDDOO PILLAY . . . . 5 Mad., 383

148. ——— *Suit by representative for share of debt due to deceased—Withdrawal of money on deposit by other representatives—Wrongful act.*—The legal representatives having allotted the estate of the deceased in certain shares among themselves, a sum of money less than R5 0, the entire amount of a debt due to the deceased, was deposited with a banker by the debtor, and was withdrawn by certain of the legal representatives. The others thereupon sued in the ordinary Civil Court for their proportionate share. *Held* that the suit was a suit for damages caused by the wrongful act of the defendants in withdrawing the whole amount, and was therefore cognizable by a Small Cause Court. KUMRUNNESSA v. SUJAN [10 C. L. R., 31

149. ——— *Suit for damages for fraudulent concealment and misrepresentation.*—A suit to recover R300 paid by plaintiff to defendant under a fraudulent concealment of the fact that defendant was engaged as mookhtear for another party who had brought a suit against plaintiff, and upon a fraudulent misrepresentation by defendant that he was conducting plaintiff's case when in fact he was acting for the opposite party, was held to be substantially a suit to recover damages for the injury sustained by plaintiff by reason of the fraudulent concealment and misrepresentation, and to be cognizable by a Small Cause Court. FATIMA BEGUM v. MOOSA . . 18 W. R., 128

150. ——— *Suit for damages for withholding receipt for rent.*—A suit for damages for withholding a receipt for rent is not cognizable by a Court of Small Causes, and therefore was held not to come under the purview of Act XXIII of 1861, s. 27. SHOYLENDRO GEER SUNNYASEE v. PATOO DOSS BUSANEA . . 23 W. R., 304

151. ——— *Suit for recovery of money paid to, but misapplied by, ijaradar.*—A suit for the recovery of money alleged to have been paid by the plaintiff to an ijaradar on account of arrears of rent, when the same has not been applied to the purpose for which it was given, or when a receipt for it is withheld from the plaintiff, is not cognizable by a Small Cause Court, but by a Munsif under s. 11, Bengal Act VIII of 1859. BROJONATH DEY v. SHUMBOO CHUNDER CHATTERJEE [18 W. R., 25

152. ——— *Act XI of 1865, s. 6—Suit for overpayment by mistake—Contract Act, s. 72.*—A suit under s. 72 of the Contract Act to recover from a creditor the amount of an overpayment made to him by mistake is a suit for damages within the meaning of Act XI of 1865, s. 6, and is accordingly cognizable by a Mofussil Court of Small Causes. BADRUNNISSA v. MUHAMMAD JAN [I. L. R., 2 All., 671

153. ——— Declaratory decree—*Suit to determine co-parcener's rights in moveable property.*—A Small Cause Court has no power to entertain a suit for a declaratory decree. There is nothing to prevent a Small Cause Court from determining whether a person who has been made a co-plaintiff and claims as a co-parcener of the original plaintiff has any right to the property sued for. The decree in such a case, if given in favour of the plaintiffs, must order that the parties do recover possession of the property sued for in such shares as the Judge may consider them to be entitled. A declaratory decree of the relative rights of the parties cannot be made. AKBAR ALI v. JEZUDDIN . I. L. R., 8 Calc., 399

154. ——— *Suit for declaration of right to bring property to sale as liable to attachment.*—A suit in which the plaintiff sues for a declaration of his right to bring certain property to sale as the property of his judgment-debtor cannot be entertained by a Small Cause Court. RAMESHUR KULWAR v. BEHAREE SETH [3 N. W., 208: Agra; F. B., Ed. 1874, 254

155. ——— *Suit for declaration of right and for consequential relief.*—A suit in which the plaintiff prays the Court to consider and declare his right as heir, and for consequential relief, is not within the cognizance of a Small Cause Court. KOLA AHEER v. SAJNA AHIMUR [3 N. W., 105

156. ——— *Act XI of 1865, s. 6—Declaration that bond is satisfied—Claim for money on bond.*—A claim for money on a bond as specified in Act XI of 1865, s. 6, does not include a case for a declaration that the bond has been satisfied and is inoperative. A suit of that description, if maintainable, must be brought in the regular Court. AGUR MULLICK MUNDUL v. DEBNATH CHATTERJEE [24 W. R., 190

157. ——— *Suit for declaration of right to moveable property wrongfully taken.*—Where a suit is brought for property wrongfully taken by the defendant praying for restoration of such property either to the plaintiff directly or to some other person wholly or partly as agent for the plaintiff, it is a "suit for property" within the meaning of the Small Cause Court Act (XI of 1865), and if the property is moveable and of less than

SMALL CAUSE COURT, MOFUSSIL—*continued.*

2. JURISDICTION—*continued.*

R500 in value the suit is then a small cause Accordingly where the plaintiffs, who were co-members with the defendants of a division of a caste, and as such tenants in-common with them of certain cooking vessels of less than R500 in value, were excluded by the defendants from possession and common use of the vessels and sought for a declaration that the plaintiffs and the defendants were equally entitled to the use of the said vessels and for restoration of the

null, and the plaint directed to be returned for presentation in the proper Court KALIAN DAYAL *v* KALIAN NAREE . I. L. R., 9 Bom., 259

158 ———— A suit for a declaration of right by a person against whom an order has been passed under s 280 of the Civil Procedure Code, 1877, will not lie in the Small Cause ... *fal Biswas, 1 41, Moozdeen W R, 99,* and *Mohan Sircar,* ... aimed SHIBOO ... YATABAR NANDI

[I. L. R., 7 Calc., 608: 9 C. L. R., 8

159. ———— Decree—*Suits to recover certain decrees, and claim to execute them* —In addition to a claim to recover certain decrees amounting together in value to less than R500, the plaintiffs claimed a decree authorizing them to put the same *into execution. The suit was not a suit of the nature* cognizable by a Court of Small Causes BALAM DAS *v.* DWARKA DAS . . . 7 N. W., 88

160. ———— *Suit on decree of Civil Court* —A suit cannot be maintained in a Small Cause Court in the mofussil to enforce the decree of a Civil Court MANCHHARAM KALLIANDAS *v* BAKSHE SAHEB MIR MAINUDIN KHAN

[6 Bom., A. C., 231

161. ———— *Suit for balance due on decree of Small Cause Court* —A suit cannot be maintained in a Small Cause Court in the mofussil to recover the unsatisfied balance of a decree of such Court. SANDES *v.* JOMIR SHAIKH . 9 W. R., 399

162. ———— *Suit for instalment of decree under Act X with stipulation for execution of decree in default* —Where a defendant agreed to pay the amount of a decree under Act X by two instalments, and the remedy provided for the enforcement of the contract in the event of the defendant making default was the execution of the decree, and not a suit in the Civil Court,—*Held* that a suit would not lie in the Small Cause Court to recover the amount of the second instalment. AGHORE CHUNDER MOOKERJEE *v* WOOMASOONDEREE DEBEA

[7 W. R., 216

DEBEE *v* KAMINEE BEWA . 10 W. R., 352

164. ———— Deed—*Suit for re-formation of a deed* —A Small Cause Court has no jurisdiction to entertain a suit for the re-formation of a deed. GULABHAI MONDAS *v* DAYABHAI GOVARDHANDAS

[10 Bom., 51

law of a deed of gift or a deed of sale GRISH CHUNDER ROY *v* GOBIND SINGH 17 W. R., 88

See ROGHOORAM BISWAS *v* RAMCHUNDER DOBEY [W. R., F B., 127: B. L. R., Sup. Vol., 34

and HUREE PERSAD MALEE *v* KOONJO BEHARY SHAHA . Marsh., 99: 1 Hay, 238

166. ———— Dower—*Suit for dower under kabinnamah* —A suit for the maujjil or exigible portion of dower due to plaintiff under a kabinnamah is cognizable by a Small Cause Court, under s 6, Act XI of 1865, notwithstanding that questions of very considerable difficulty may be raised in

[17 W. R., 512

167. ———— *Suit for deferred dower—Act XI of 1865, s. 6* —A suit for deferred dower or muwajjal, payable to the wife by the husband upon her divorce, or upon the husband's *death by his heirs out of his estate is cognizable by* a Small Cause Court HAYATUNNISSA BIBEE *v.* ASIROODDEEN . . 18 W. R., 304

168. ———— *Suit for property conveyed in lieu of dower* —*Held* that a suit for R100 would not lie in the Small Cause Court upon a deed by which the defendant conveyed to the plaintiff, in lieu of the amount (R100) due to her as a dower, a half share in all his property, moveable and immoveable, and under which deed, therefore, the plaintiff was entitled to a moiety of all such *property,* but could not sue for the sum originally stipulated for. NEELOO BEBEE *v.* MISSER BISWAS

[6 W. R., Civ. Ref., 12

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

169. ——— Endowment—*Suit by Mahomedan for share of property under terms of certain endowment—Provincial Small Cause Courts Act (IX of 1887), sch. II, cl. 18.*—A suit by a Mahomedan to obtain a share in property distributable under the terms of a certain endowment is a suit of the nature contemplated by cl. 18 of sch. II of the Provincial Small Cause Courts Act (IX of 1887), and therefore not cognizable by a Court of Small Causes. MIHR ALI SHAH *v.* MUHAMMAD HUSEN [I. L. R., 14 All., 413

170. ——— Foreign judgment—*Jurisdiction—Suit on foreign judgment.*—A suit upon a foreign judgment is not cognizable by a Court of Small Causes established under Act XI of 1865. ANAKATTIL NARAYANA KRISHNAN KARTHAVU *v.* KOCHERI PILO PILO . I. L. R., 6 Mad., 191

171. ——— *Suit on foreign judgment—Judgment of Court of Native State.*—No suit is maintainable in a Small Cause Court in British India founded upon the judgment of a Court situate in a Native State. BHAVANISHANKAR SHEVAKRAM *v.* PURSADRI KALIDAS [I. L. R., 6 Bom., 292

172. ——— Government—*Suit to which Government officials are parties—Act XI of 1865, ss. 1 6, and 9—Local Government.*—A suit, within the pecuniary and other limits prescribed for Courts of Small Causes, in which an officer of Government is a party in his official capacity, may be entertained by a Court of Small Causes in the mofussil. The phrase "Local Government" used in s. 9, and defined in s. 1 of Act XI of 1865, does not apply to the Collector of a district, but rather to the Governors or Lieutenant-Governors of Presidencies or Commissioners of Provinces. DESALJI MANAJI *v.* HEMADALLI IMAM HAIDARBAKSHA 10 Bom., 308

173. ——— *Suit for compensation for damages against the Secretary of State—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 3.*—A suit was brought against the Secretary of State in a Mofussil Small Cause Court for compensation for damages done to an oil-mill by the officials of the Nalhati State Railway. *Held* that the suit was not within art. 3, sch. II of Act IX of 1887, and that it was cognizable by the Small Cause Court. PUNWARI LAL MOOKERJEE *v.* SECRETARY OF STATE FOR INDIA [I. L. R., 17 Calc., 290

174. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 3—Karnam in a zamindari—Officer of Government—Public servant.*—The plaintiffs, being the lessees of a settled zamindari, brought a suit in a Small Cause Court against a karnam in the zamindari to recover damages sustained by reason of the defendant's default in keeping certain accounts, etc. *Held* that the karnam was not an officer of Government, and that the suit was maintainable under the Provincial Small Cause Courts Act. ORR *v.* NEELAMEGAM PILLAI . . . I. L. R., 18 Mad., 395

175. ——— Immoveable property—*Provincial Small Cause Courts Act (IX of 1887), sch. II, arts. 4 and 13—Hereditary allowance—Bombay General Clauses Act (Bom. Act III of 1886).*—Plaintiffs sued in the Court of Small Causes at Poona to recover R400 for arrears alleged to be payable to them under an agreement by the defendant's father to pay R150 per annum, of which R50 were for maintenance of plaintiff's mother and the residue was to be applied towards defraying the expenses of a temple. The terms of the agreement showed that it was intended that the payment for the expenses of the temple should be continued in perpetuity. The Judge dismissed the suit, holding that being for a hereditary allowance it was a claim for immoveable property and came under cls. (4) and (13) of sch. II of the Provincial Small Cause Courts Act (IX of 1887). On application by the plaintiffs to the High Court under s. 25 of the Provincial Small Cause Courts Act (IX of 1887),—*Held*, reversing the decree, that the suit was not for possession of immoveable property or recovery of an interest in such property within the meaning of art. 4, nor did it come within the purview of art. 13 of sch. II of the Act. The Small Cause Court had therefore jurisdiction to entertain the suit. VISHNU GANESH JOSHI *v.* YESHAVANTRAO . . . I. L. R., 21 Bom., 387

176. ——— Intestacy—*Suit for money as share under an intestacy.*—The decree of a Small Cause Court was annulled as made without jurisdiction in a suit to recover money as personal property in respect of a share under an intestacy. GRISH CHUNDER SINGH *v.* AUNA DOSSEE . 17 W. R., 46

NOBIN CHUNDER GOSSAMEE *v.* DRIBO MOYEE DEBEE . . . . . . 17 W. R., 520

177. ——— *Suit for possession of personal property as heir under former decree.*—A suit for possession of personal property to which the plaintiff has been, by a decree in a former suit, declared entitled as heir of a third person, is not a suit coming within the second exception to s. 6 of Act XI of 1865, and is therefore, where the value is not beyond the jurisdiction, cognizable by a Court of Small Causes, and consequently no appeal lies from the decree in such a suit. MOHESHUR MONDUL *v.* KOILASH NATH MONDUL . 7 C. L. R., 71

178. ——— Maintenance—*Suit for arrears of maintenance—Right to maintenance.*—A Small Cause Court has jurisdiction only as regards arrears of fixed maintenance, but not to determine the right to receive it. BHUGWAN CHUNDER BOSE *v.* BINDOOBASHINEE DOSSEE . . 6 W. R., 286

179. ——— *Suit for arrears of maintenance.*—*Held* that a suit by a widow for arrears of maintenance fixed by a Munsif's decree, where defendant urged non-liability on the ground that the property of plaintiff's husband was exhausted, and that defendant had already brought an action in the Munsif's Court for release from his liability, was

2 JURISDICTION—*continued.*

not cognizable by the Small Cause Court. KAMINEE DOSSEE *v* BISHONATH SHAHA . 9 W. R., 214

HEMA KOOERREE *v* AJOODHYA PERSHAD [24 W. R., 474

MOYE DASIA *v.* BHOGIRUTH CHUNDRA [I. L. R., 15 Calc., 164

181. ——— *Provincial Small Cause Courts Act (IX of 1887), cl 38, sch II—Suit for arrears of maintenance due under a bond or agreement*—A suit for arrears of maintenance due under a bond or agreement is not cognizable by a Provincial Court of Small Causes under cl 38 of sch II of Act IX of 1887 BHAGVANTRAO *v* GANPATRAO I. L. R., 16 Bom., 267

182. ——— *Suit for arrears of maintenance—Provincial Small Cause Courts Act (IX of 1887), sch II, art 38*—A suit for arrears of maintenance payable under a written agreement does not lie in a Provincial Small Cause Court SAMINATHA AYYAN *v* MANGALATHAMMAL [I. L. R., 20 Mad., 29

183. ——— *Suit by Hindu widow.—Held* that a suit for maintenance by a Hindu widow is cognizable by a Court of Small Causes in the mofussil JUDAL KOM RANCHHOD MULJI *v* HIRA MULJI 4 Bom., A. C., 75

RAMCHANDRA DIKSHIT *v* SAVITRIBAI [4 Bom., A. C., 73

But *see quære* in RAMABAI *v* TRIMBAK GANESH DESAI . . . . . 9 Bom., 283

184. ——— *Suit for maintenance*—In the absence of any special bond or other contract for the payment of maintenance, a suit for maintenance is not cognizable in a Court of Small Causes in the mofussil SIDLINGAPA *v* SIDAVA KOM SIDLINGAPA . . I. L. R., 2 Bom., 624

NOBIN KALEE DEBEA *v* BINDUBASHINEE DEBEA [5 W. R., S. C. C. Ref., 5

185. ——— *Suit for maintenance*—In a suit by a Hindu widow against her [illegible] R500, was not cognizable by a Court of Small Causes under Act XI of 1865, there being no allegation that the maintenance claimed was secured by bond or other special contract. *Nobin Kalee Debea v. Bindubashinee Debea, 5 W. R., S. C. C. Ref., 5,* followed. APAJI CHINTAMAN DEVDHAR *v.* GANGABAI [I. L. R., 2 Bom., 632

186. ——— *Act XI of 1865, s 6—Civil Court—Suit by the mother of a child to recover from the father the cost of its maintenance.*—A Mahomedan wife, divorced by her husband while [illegible] The [illegible] h was [illegible] v sued [illegible] her in the child's maintenance *Held* that the obligation on which the suit was based was one, if it existed at all, that was imposed on the father by the law, and did not arise out of any contract, express or implied, hence the suit was one not cognizable by a Court of Small Causes, but by the ordinary Civil Court. NURBIBI *v* HUSEN LAL I. L. R., 7 Bom., 537

187. ——— *Suit for breach of agreement for payment in nature of maintenance*—Where the defendant entered into an agreement in writing with the plaintiff (the widow of defendant's brother) to deliver to her every year a specified quantity of paddy by way of maintenance,—*Held* that the Small Cause Court had jurisdiction to entertain a suit for a breach of the agreement. PAUPAMMA *v* CHINNA REDDY . 5 Mad., 432

188. ——— *Provincial Small Cause Courts Act (IX of 1887), sch II, art 38—Suit for maintenance based on a family arrangement*—A suit for maintenance based on a family arrangement is within the jurisdiction of a Mofussil Small Cause Court KOMU *v* KRISHNA [I. L. R., 11 Mad., 134

189. ——— *Suit for maintenance fixed by decree of Court*—A suit for maintenance fixed by a Court's decree is not cognizable by a Small Cause Court PAHLUD SINGH *v* AHLUD SINGH 6 N. W., 91

190. ——— *Suit for maintenance fixed by decree*—A suit by a Hindu widow for arrears of maintenance, based on a decree charging immoveable property with the payment of the maintenance allowance, is not a suit of the nature cognizable in a Court of Small Causes. *Pahlud Singh v Ahlud Singh, 6 N. W., 91,* followed. DHARAM CHAND *v.* JANKI I. L. R., 5 All., 389

191. ——— *Suit for arrears of maintenance fixed by award.*—A suit for arrears of maintenance, at a rate ascertained by an award, is not a suit of the nature cognizable by a Court of Small Causes (*Guneshee v Chotay Lal, 3 N W., 117*). The suit was bad, being based upon an award in which the arbitrators had exceeded their powers. DURJAN SINGH *v.* SIBIA . . 7 N. W., 329

192. ——— Marriage—*Provincial Small Cause Courts Act (IX of 1887), sch II, art 35, cl (g)—Suit for actual pecuniary damages for breach of contract of marriage—Jurisdiction.*—A suit for actual pecuniary damages for breach of contract of marriage comes within cl. (g) of art. 35, sch II of Act IX of 1887, and as such is excluded

2. JURISDICTION—*continued.*

from the jurisdiction of the Small Cause Court. KALI SUNKER DASS *v.* KOYLASH CHUNDER DASS [I. L. R., 15 Calc., 833

193. ——— Mesne profits—*Suit solely for mesne profits.*—A suit for mesne profits only, no other question arising, is cognizable by a Small Cause Court. SUNGRAM SINGH *v.* JUGGUN SINGH [2 N. W., 18

194. ——— *Suit for mesne profits—Provincial Small Cause Courts Act (IX of 1887), sch. 11, art. 31.*—A suit for the mesne profits of land for a period during which the plaintiff had been dispossessed by the defendant comes within art. 31 of sch. II of Act IX of 1887, and therefore is not cognizable by a Small Cause Court. SRIRAM SAMANTA *v.* KALIDAS DEY [I. L. R., 18 Calc., 31

195. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 31—Suit for mesne profits under R500—Civil Procedure Code (Act XIV of 1882), s. 586—Second appeal.*—A suit for mesne profits is cognizable in Courts of Small Causes where the value of the subject-matter in dispute is less than R500, and art. 31 of sch. II of the Provincial Small Cause Courts Act does not apply thereto. Such a suit falls within the provisions of s. 586 of the Civil Procedure Code, and no second appeal lies from a decision in it. *Kunjo Behary Singh* v. *Madhub Chundra Ghose, I. L. R., 23 Calc., 884,* followed. SESHAGIRI AYYAR *v.* MARAKATHAMMAL [I. L. R., 22 Mad., 196

LINGAYYA AYYAVARU *v.* MALLIKAYUNA AYYAVARU . I. L. R., 22 Mad., 196 note

196. ——— Military men—*Military officer—Military Court of Requests.*—A Court of Small Causes has no jurisdiction to try an action brought against a military officer in a military cantonment where a Court of Requests is established. ABOO SAIT & CO. *v.* ARNOTT. ABOO SAIT & CO. *v.* DALE . . . . 2 Mad., 439

197. ——— *Military Courts of Requests—Act XLII of 1860.*—Act XLII of 1860, s. 6, did not alter or interfere with the jurisdiction of the Military Courts of Requests constituted by Stat. 20 & 21 Vict., c. 66, s. 67. SHANMUGA *v.* MEDDLETON . . 1 Mad., 443

198. ——— *Liability of European soldiers and their native wives to Small Cause Court jurisdiction.*—Reference to the High Court regarding the amenability of European soldiers and their native wives to Small Cause Courts in action for debt. KEEFE *v.* CHRISTIE [5 W. R., S. C. C. Ref., 21

199. ——— *Non-Commissioned officer in civil employ.*—A non-commissioned officer or soldier not serving in the army but employed in the civil department and residing beyond military cantonments is amenable to the jurisdiction of the Small Cause Court as a Civil Court, even in cases below thirty pounds. COHEN *v.* MCCARTHY [14 W. R., 231

200. ——— *European soldier acting as army schoolmaster.*—A European soldier doing duty as an army schoolmaster, not being liable to a Court of Requests, is not exempted from liability to a Cantonment Court of Small Causes. The Mutiny Acts give soldiers no privileges as to liability to jurisdiction or actions. MAWADY BEEJARAJOO *v.* HAYNES . . . 6 Mad., 83

201. ——— *Suit against military officer—Military Court of Requests—Mutiny Act, 1862, s. 103.*—An action was brought in a Small Cause Court against a military officer residing at M, at which the only other military persons stationed were staff officer and two sergeants. *Held* that the Court had jurisdiction to try the case, the suit not being one exclusively cognizable by a Court of Requests under s. 103 of the Mutiny Act of 1864. BASTIAN *v.* TIREMAN . . . 2 Mad., 389

202. ——— *Mutiny Act 30 & 31 Vict., c. 13, s. 99—Camp-followers—Jurisdiction of Civil Court.*—The defendant, a native of India, attached to the mess of a European regiment stationed at Sinchal, was held to come within the provisions of s. 2 of the Mutiny Act (30 & 31 Vict., c. 13) as being a "follower in or of Her Majesty's Indian forces," and therefore to be, by s. 99, exempt while in that position from the jurisdiction of the Civil Court. NASIRUDDIN *v.* KHODABAKSH . . . 2 B. L. R., S. N., 7

S. C. MUSSEROODDEEN *v.* KHODA BUX [10 W. R., 386

203. ——— *Military officers.*—The 99th section of the Mutiny Act (30 & 31 Vict. c. 13) exempts officers in all places in India, where anybody of Her Majesty's force may be serving, from the jurisdiction of the Civil Courts in respect of personal actions. Where the defendants were residents of Sinchal and Jallapahar, and attached to the troops stationed there,—*Held* that they were not amenable to the jurisdiction of the Small Cause Court at Darjeeling. HOSSEIN *v.* DICKENSON . . . 2 B. L. R., S. N., 3

S. C. HOSSEINEE *v.* DICKINSON . 9 W. R., 112

204. ——— Money illegally exacted—*Suit for money illegally exacted from plaintiff—Mamlatdar's order—Bom. Act V of 1879, s. 87.*—A suit for an amount less than R500, which the plaintiff alleged to have been illegally exacted from him by the defendant as rent, under a Mamlatdar's order, *held* to be cognizable by a Court of Small Causes, and not by a Subordinate Civil Court. GANESH HATHI *v.* MEHTA VYANKATRAM HARJIVAN [I. L. R., 8 Bom., 188

205. ——— *Suit to recover illegal exaction of rent.*—A suit to recover an illegal

SMALL CAUSE COURT, MOFUSSIL —*continued*

2 JURISDICTION—*continued.*

exaction of rent will not lie in the Small Cause Court. SUBBO CHUNDER DOSS *v* WOOMANUND ROY [11 W. R., 412

and therefore, under s 27 of Act XXIII of 1861, no special appeal lay District Judges should ordinarily try such suits when brought in the District Court, and should not delegate the trial to their assistants RAMCHANDRA BHIKAJI *v* COLLECTOR OF RATNAGIRI 10 Bom, 305

as such claimed and realized from a tenant R20, being one fourth of the price of trees cut down and sold by the tenant, basing his claim on general usage The tenant sued to recover such money, denying that any such usage existed. *Held* that the suit was in

[I. L. R., 4 All, 19

208. ——— *Suit by assignee of profits against lambardar* —The transferee of a mortgage of a share of an undivided estate sued the lambardar of the estate for the profits of such share for a certain year, the amount claimed being R500 *Held*, regarding such suit as one for money had and received to the plaintiff's use, that it was one of the nature cognizable in a Court of Small Causes. MUHAMDI BEGAM *v* ABBAS ALI KHAN [I. L. R., 5 All, 531

209. ——— *Money deposited under agreement to return mortgaged property* —*C*, a mortgagee, the mortgage having been foreclosed, sued *D*, the mortgagor, for possession of the mortgaged property and obtained a decree for possession thereof He subsequently agreed with *D* to surrender the mortgaged property to him if he deposited the mortgage money in Court by a specific day *D* borrowed the money for this purpose by means of a conditional sale of the property to *L* and deposited it in Court, the deposit was made after the specified day, and consequently *C* took possession of the property The money deposited by *D* remained in deposit, and while there *C* caused it to be attached in execution of a money decree he held against *D*, and it was paid to him *L* thereupon sued C in the Munsif's Court to recover the money which amounted to R350 *Held* that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognizable in a Court of Small Causes. LACHMAN PRASAD *v*. CHAMMI LAL . I. L. R., 4 All, 6

210. ——— *Suit for money received for plaintiff's use* —When one of two or more joint creditors receives full payment of the debt, he does so under the implied contract that he will deliver their shares to the other joint creditors. Such implied contract falls under the purview of s 6 of Act XI of 1865, and a suit will lie in the Small Cause Court by a creditor to recover his share *Lachman Prasad* v *Chammi Lal I L R, 4 All, 6, Huro Mohun Roy* v *Khettromonee Dossee, 12 W R, 372, Sunkur Lall Patluck Gyawal* v *Ram Kalee Dhamin, 18 W R 104* referred to SOHAN *v*. MATHURA DAS I L R, 6 All, 449

211. ——— *Suit for share of compensation awarded for land acquired for public purposes* —A suit was brought by some of the co sharers in a putti of a mehal in which land had been taken for public purposes under the Land Acquisition Act against the other co sharers in the putti for the proportion due to them out of a sum of money which had been awarded as *compensation for the* acquisition of the land and which the defendants had received *Held* that the suit was one for money had and received for the plaintiff's use and was therefore cognizable by a Court of Small Causes *Sohan* v *Mathura Das, I L R, 6 All 449*, followed UMRAI *v* RAM LAL I L R, 7 All, 384

212 ——— *Suit to recover share of profits of inam villages—Provincial Small Cause Courts Act (IX of 1887), sch II, cls (4), (31), s 23, cl (1)* —In a suit for the recovery of a certain share in the profits of inam villages, of which the defendant was the manager, the only relief *claimed by the plaintiffs being payment of money,*

Courts Act (IX of 1887), as it was not a suit for the possession of immoveable property or for recovery of an interest in such property If the plaintiffs had alleged that the defendant had "wrongfully received" the plaintiffs' share of profits, then the suit would have fallen under cl (31) sch. II of the Act. DAMODAR GOPAL DIKSHIT *v* CHINTAMAN BAL KRISHNA KARVE . I L R., 17 Bom., 42

213. ——— Mortgage—*Money decree on mortgage bond* —A Small Cause Court has jurisdiction to give a simple money-decree in a suit upon a bond in which landed property is hypothecated. DOORHYAR ROY *v* DULSINGAR SINGH [12 W R., 367

214 ——— *Money decree on mortgage bond* —The Small Cause Court has no jurisdiction in the case of a claim for money due under a bond for less than R50 0, where the property pledged under the bond is made liable TRIPOORA SOONDUREE *v* KOYLASH CHUNDER BOSE [15 W R., 265

215. ——— *Suit to enforce contract pledging moveable property* —Plaintiff sued

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

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218. ———— *Suit for enforcement of hypothecation against moveable property—Act XI of 1865 (Mofussil Small Cause Courts Act), s. 6.*—A suit was brought in a Small Cause Court to recover a sum of money from the defendants personally, and by enforcement of hypothecation of certain cattle by their attachment and sale. The cattle were in the hands of other persons, who had purchased them at an auction-sale in execution of a decree against the original defendants, and who were added as defendants under s. 32 of the Civil Procedure Code, 1882. *Held* that the suit was not cognizable by a Small Cause Court, inasmuch as it did not fall under the category of a "suit for money due on a bond or other contract," or of a "suit for personal property, or for the value of such property," within the meaning of s. 6 of the Mofussil Small Cause Courts Act (XI of 1865). *Ram Gopal Shah* v. *Ram Gopal Shah, 9 W. R., 136,* and *Godha* v. *Naik Ram, I. L. R., 7 All., 132,* referred to. SURAJPAL SINGH *v.* JAIRAMGIR . . . I. L. R., 7 All., 855

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SMALL CAUSE COURT, MOFUSSIL. —*continued.*

2. JURISDICTION—*continued.*

220. ———— *Suit for order to enforce mortgage-decree against person and property of defendant.*—A suit to obtain an order from the Court that a decree upon a mortgage of a certain house should be enforced against the person and property of the defendant, who had purchased the house at auction subject to the plaintiff's mortgage, but had subsequently removed the materials of the same and so deprived the plaintiff of his lien thereon, not being a claim for debt, damages, or for the recovery of property, is not cognizable by a Court of Small Causes. OMER KURIM *v.* LALA SHEWAN LALL . . . . . 4 C. L. R., 291

221. ———— *Mortgage of moveable property—Suit for redemption.*—Where moveable property has been pledged in a mortgage-bond as security for a loan, and the amount due on the mortgage is tendered but declined, the mortgagor's suit for possession will lie in the Small Cause Court. But if there has been tender and the suit is for possession after ascertainment of defendant's lien on the property, the Small Cause Court has no jurisdiction in the matter. BHUBOTARINEE GHOSANY *v.* JUGGERNATH TEWARY . . . . 16 W. R., 58

222. ———— Moveable property—*Act XI of 1865, ss. 19 and 20—Huts.*—Huts are not "moveable property" within the meaning of Act XI of 1865. RAJ CHUNDER BOSE *v.* DHARMACHANDRA BOSE

[2 B. L. R., A. C., 77: 8 B. L. R., 510 note . 10 W. R., 416

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Contra, KASI CHANDRA DUTT *v.* JADUNATH CHUCKERBUTTY

[8 B. L. R., 512 note: 10 W. R., 29

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225. ———— *Sugar mill—Moveable property.*—A stone sugar-mill was held to be moveable or personal as distinguished from immoveable property. HURMUNGAL SINGH *v.* ATHUL SINGH . . . . . . 4 N. W., 15

226. ———— *Trees—Growing crops—Moveable property.*—Trees and growing

MALL CAUSE COURT, MOFUSSIL
—continued.

2 JURISDICTION—*continued.*

ops are not moveable property. TOFAIL AHMUD *v.* BANEE MADHUB MOOKERJEE . 24 W.R., 394

227 —— *Growing crops*

Growing crops are "immoveable property," and execution of a decree of a Small Cause Court cannot be had against them under s 19 of Act XI of 1865 GOPAL CHANDRA BISWAS *v.* RAMJAN SIRDAR [5 B L. R., 194: 13 W. R., 275

MUHAMMAD SILEMAN *v.* SATU VALAD HARJI [5 Bom, A. C, 90

228. —— *Suit for possession of tree or delivery of produce—Suit for definite quantity of produce of tree*—A Small Cause Court

LAKSHMINARASAMMA *v.* VEPA VENKATRAMADAS [3 Mad, 237

229. —— *Suit for fruit upon trees—Suit for compensation for the wrongful taking of fruit upon trees—Immoveable property*—When the damage or demand does not exceed in amount or value the sum of five hundred rupees, a suit for the fruit upon trees, or damages in lieu thereof, is a suit cognizable in a Mofussil Court of Small Causes, the fruit upon trees not being immoveable property, but being moveable property within the meaning of s. 6 of Act XI of 1865 NASIR KHAN *v.* KARAMAT KHAN . I L. R., 3 All, 168

230. —— *Thatch.*—Suit to recover a thatch of a value less than Rs50 must be brought in the Small Cause Court. A thatch, especially when severed from the house, is moveable property RAJKUMAR MOOKERJEE *v.* PRANNATH MOOKERJEE 7 B. L. R., Ap, 41: 15 W. R., 499

231. —— *Suit to recover baluta leviable on the crops of village lands*—A suit to recover baluta leviable on the crops of village lands is not a suit for an interest in land but for a share of produce severed from land and is cognizable by a Mofussil Court of Small Causes. NARU PIRA *v.* NARO SHIDHESHVAR . I. L R, 3 Bom, 28

or aya is a claim in respect of a hak belonging to, and forming the emoluments of, an hereditary office amongst Hindus, and one in respect of immoveable and not moveable or personal property A Mofussil Small Cause Court has no jurisdiction to entertain a suit for such a claim There is no difference in principle between the haks of hereditary officiating members of a village and the haks appendent to the hereditary office of a village joshi, or the office of an hereditary priest of a temple and its emoluments. The

SMALL CAUSE COURT, MOFUSSIL
—continued.

2. JURISDICTION—*continued*

haks of the former are not personal property. APPANA *v.* NAGIA . I. L. R., 6 Bom., 512

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234. —— *Suit for malikana allowance*—A suit for a malikana allowance concerns the proprietary right in land A dispute concerning it may be regarded in the same light for the purposes of jurisdiction as a dispute concerning the proprietary right itself A suit therefore of this special description is not one for a Small Cause Court MAHOMED KARAMUTOOLLAH *v.* ABDOOL MAJEED [1 N. W, 205: Ed 1873, 288

235. —— *Act XI of 1865,*

sum borrowed was repaid A obtained a decree against B for the amount of the loan and attached the buffaloes in execution This attachment was set aside at the instance of C, who purchased the buffaloes from B after the date of the ikrar given by B to A A sued C (making B a party) in the Small Cause Court, praying for the sale of the buffaloes pledged to him by B, or, in default of that, for the sum due to him *Held* that such a suit was not a suit within s. 6, Act XI of 1865, to recover personal property, or the value of personal property, and was not cognizable by the Small Cause Court. RAM GOPAL SHAH *v* RAM GOPAL SHAH 9 W. R, 136

236 —— *Madras Rent*

constituted under Act XI of 1865. DAVUD BEG *v.* KULLAPPA I. L R., 11 Mad., 264

237. —— **Municipal Commissioners**—*Act XI of 1865, s 9—Suit against Municipal Commissioners*—S 9 Act XI of 186 , is no bar to a suit against Municipal Commissioners being brought in a Court of Small Causes. HURISH CHUNDER TALAPATTUR *v* O'BRIEN 14 W. R., 248

238. —— **Municipal tax**—*Suit to recover Municipal tax.*—A suit to recover a Municipal tax is not cognizable by a Small Cause Court constituted under Act XI of 1865 LOGAN *v* KUNJI [I. L. R, 9 Mad., 110

239. —— *Wrongful assessment of profession tax—Madras District Municipalities Act (Mad Act IV of 1884), ss. 49, 50—Provincial Small Cause Courts Act (IX of

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

for recovery of a sum of money lent upon the pledge of personal property, and asked that the moveable property pledged might be declared liable. *Held* that a Small Cause Court had jurisdiction to entertain a suit to enforce a contract pledging moveable property. APPAVU PILLAI *v.* SUBRAYA MUPPEN [2 Mad., 474

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SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

220. ———— *Suit for order to enforce mortgage-decree against person and property of defendant.*—A suit to obtain an order from the Court that a decree upon a mortgage of a certain house should be enforced against the person and property of the defendant, who had purchased the house at auction subject to the plaintiff's mortgage, but had subsequently removed the materials of the same and so deprived the plaintiff of his lien thereon, not being a claim for debt, damages, or for the recovery of property, is not cognizable by a Court of Small Causes. OMER KURIM *v.* LALA SHEWAN LALL . . . . . 4 C. L. R., 291

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226. ———— *Trees—Growing crops—Moveable property.*—Trees and growing

SMALL CAUSE COURT, MOFUSSIL —continued.

2 JURISDICTION—*continued*

crops are not moveable property. TOFAIL AHMUD *v.* BANEE MADHUB MOOKERJEE 24 W.R., 394

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228. ——— *Suit for posses-*

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232 ——— *Act XI of 1865, s 6—Suit by vatandar mahars to recover "aya" —Immoveable property, What is*—A suit for baluta or aya is a claim in respect of a hak belonging to and forming the emoluments of, an hereditary office

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SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

1887), sch. II, para. 1—Order of a Local Government.—The Municipality at Tuticorin demanded R50 as profession tax from the South Indian Railway Company, which had already paid profession tax to the Municipality at Negapatam. The Company complied with the demand under protest, and sued the Municipality for a refund of the amount paid on the Small Cause Side of the District Munsif's Court. *Held* the Court had jurisdiction to hear and determine the suit; ss. 49 and 50 of the Madras District Municipalities Act of 1884 and sch. II, cl. 1, of the Provincial Small Cause Courts Act (IX of 1887) are not applicable to such a suit. TUTICORIN MUNICIPALITY *v.* SOUTH INDIAN RAILWAY CO.

[I. L. R., 13 Mad., 78

240. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, arts. 8 and 13—Calcutta Municipal Consolidation Act (Beng. Act II of 1888), ss. 117 and 119—Suit to recover occupier's share of tax by the owner of a bustee.*—A suit by the proprietor of bustee land for the recovery of Municipal taxes from the owner of a hut in the bustee is cognizable by the Provincial Small Cause Courts. BROJONATH MITTRA *v.* GOPI SHAKRANI . **I. L. R., 23 Calc., 835**

241. ——— **Order of Civil Court**—*Suit to set aside miscellaneous order of Civil Court.*—A Small Cause Court has no jurisdiction to set aside a miscellaneous order passed by a Civil Court. BUNSEEDHUR *v.* KUDDEY LALL

[1 N. W., 112; Ed. 1873, 198

242. ——— **Partnership account**—*Suit for partnership account.*—A suit for an account of a partnership is not cognizable by a Small Cause Court SHURRUT CHUNDER KUR *v.* RAM SHUNKUR SURMAH . . . . . . **10 W. R., 214**

243. ——— *Act XI of 1865, s. 6.*—Where defendant had been plaintiff's servant in charge of plaintiff's shop, on the understanding that he was to be remunerated by a small share of the profits in lieu of fixed wages, a suit to recover the balance after deduction of such remuneration was held to be a suit on a demand cognizable by a Small Cause Court, and not for balance of partnership account. RAM KANAYE SHAHA *v.* BYKUNTNATH SHAHA . . . . . . **15 W. R., 89**

244. ——— *Suit involving question of partnership account.*—*A*, *B*, and *C*, the joint owners of an estate, sued their tenant in the Munsif's Court for rent; the tenant defeated the suit by proving payment of the entire rent to *B*. *A* then brought a suit in the Small Cause Court against *B* for damages equal in amount to the one-third of rent due to him and the costs incurred by him and awarded against him in the rent-suit in the Munsif's Court. *B* pleaded that he had expended the share of rent due to *A* for the benefit of the joint estate, and that *A* had collected the rents of other mehals belonging to the joint estate, and had not accounted for such rents. *Held* that the suit, being one which involved questions of partnership account between the joint proprietors of an undivided estate, could not be entertained in a Court of Small Causes. RAMTONU ACHARJEE *v.* PEARYMOHUN ACHARJEE

[I. L. R., 6 Calc., 551 : 7 C. L. R., 557

245. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 29 (c)—Suit by a retired partner for the consideration due on account of his retirement.*—A suit by a retired partner for money alleged to have been agreed to be paid to him by the continuing partners in consideration of his retirement is not a suit for balance of a partnership, and is not excluded from the jurisdiction of a Court of Small Causes. FAUJI LAL *v.* CHANGA MAL

[I. L. R., 19 All., 513

246. ——— *Settlement of accounts—Promise to pay balance.*—The plaintiff and defendant, having carried on business in partnership, settled their accounts and struck a balance of R196, which the defendant agreed orally to pay in a month The plaintiff now sued in a Small Cause Court for the amount, not asking for an account to be taken. *Held* that the suit was maintainable. MARIMUTHU *v.* SAMINATHA PILLAI

[I. L. R., 21 Mad., 366

247. ——— **Prisoners' Testimony Act (XV of 1869)**—*Mofussil Small Cause Court, Judge of—Defendant in custody.*—A Judge of a Small Cause Court in the mofussil could direct the jailor to bring up before the Court, at the hearing of the suit, a defendant committed to custody, under s. 78 of Act VIII of 1859, without having recourse to the procedure under Act XV of 1869. KILARAM MAJI *v.* NARAYAN DAS

[5 B. L. R., 215 : 13 W. R., 278

248. ——— **Purchase-money**—*Civil Procedure Code, s. 315—Suit to recover purchase-money—Suit by purchaser at Court-sale when debtor had no saleable interest.*—A suit brought, under s. 315 of the Code of Civil Procedure, by a purchaser at an execution-sale to recover the purchase-money, when it is found that the judgment-debtor had no saleable interest in the property which purported to be sold, is not a suit of a nature cognizable by a Small Cause Court constituted under Act XI of 1865. PACHAYAPPAN *v.* NARAYANA . **I. L. R., 11 Mad., 269**

249. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 11—Suit to recover purchase-money by purchaser ejected from possession of his purchase by a third person.*—Where a plaintiff brought a suit in the Small Cause Court to recover from the defendant the purchase-money which he had paid for a piece of land, but from which, however, he had been ejected by order of a Civil Court at the instance of a third person, it was *held* that the exception to art. 11 of the second schedule to the Provincial Small Cause Courts Act (IX of 1887) was no bar to the maintainability of the plaintiff's suit, although, as a defence to the action, it

SMALL CAUSE COURT, MOFUSSIL —*continued*

2 JURISDICTION—*continued.*

may be necessary for the defendant to show that he had a good title. GOOL KHAN *v* TETAR GOALA [4 C. W. N., 63

RUGHUNATHDAS *v.* TULSIRAM BIN DOULATRAM [I. L. R., 2 Bom., 558

251 ———— Registration Act—*Suit on bond under s 52, Registration Act, 1864*—The Court which had jurisdiction in a proceeding to *enforce payment*, under the provisions of the Regis-

time of the application KISHAB LAL MITTER *v* MASABDY MUNDUL 4 W. R., S. C. C. Ref., 11

SREEMUNT SEN *v* GOHAI GAZEE 18 W. R., 199

which was a suit under s 53 of Act XX of 1866

252 ———— *Bond registered under Act XX of 1866, s 53*—A suit upon a bond

passed on an application for execution of a decree made in such a suit; BULLOV BHUTTACHARJEE *v* BABURAM CHATTOPADHYA I. L. R., 11 Calc., 169

253 ———— Rent—*Suit for money for permission to tap date trees*—Suit for money for which plaintiff agreed to let defendant tap certain date-trees and appropriate the produce for a single season, —*Held* that such a suit was not one for rent, but for the breach of a contract in respect of which a Small Cause Court has jurisdiction DEB NATH GHOSE *v* PACHOO MOLLAH 6 W. R., Civ Ref., 8

254. ———— *Suit by landholder against purchaser of produce of tenant's land for rent—Damages*—*B*, who held a decree for money against *G*, a cultivator brought to sale in execution of his decree the produce of certain land occupied by *G* and such produce was purchased by *S* The landholder, to whom *G* owed rent for the land sued *G* and *S* for the amount of the rent, on the ground that under s. 56 of the N W P Rent Act the produce of the land was hypothecated for the rent *Held* that the defendants could only be held responsible *ex delicto*, and the suit was therefore one for damages, and the amount claimed, being under R600 one cognizable in a Court of Small Causes SHIBBA *v.* HULASI . I. L. R., 5 All., 518

255. ———— *Suit for rent under agreement—Failure to prove agreement*—In a suit for rent of a holding which the plaintiff alleged to be included within certain homestead land which he owned in virtue of a sale certificate in execution of a decree, the defendant urged that the said holding

to him or to the defendant, and would require to be settled in the Civil Court KHUDEERAM BISWAS *v* KOBAL BUDONEE DOSSEE . . 21 W. R., 379

256 ———— *Tenant and under-tenant—Assignment of rent—Set off*—The plaintiff held an under tenure within a jote jumma held by *B* within *D's* zamindari and under an assignment from *B* paid to the zamindar *D* a sum of money as rent due by *B* to *D* Ultimately *D*, ignoring such payment, recovered the rent from *B* by a separate suit in which no plea of payment was his due from t an action was Court against the zamindar defendant *D* *Held* that, in the absence of any authority from *B* to plaintiff to set off his payment to *D* against the rent due to *B*, the Collector had no jurisdiction to try whether *B* owed the plaintiff a sum equal to the rent, and that the

DOSSIA . . . 12 W. R., 190

257. ———— *Suit for use of land—Damages—Rent*—Suit for rent or hire of land which defendant *used and caused to be used for* passing and repassing to and from his steamer,—*Held* that, if there was no express hiring, the defendant ought to be sued for damages for trespassing upon the plaintiff's land, that if he agreed to pay for the use of a way across the land, it would not be rent, and that in either case the Small Cause Court was competent to entertain the suit BRICE *v* TOOGOOD . 5 W. R., S. C. C Ref., 18

258. ———— *Suit for rent of land with buildings*—In a suit for rent of land, where the principal subject of the entire occupation is bastu land, the residue (if any) of the holding being merely subordinate, the Small Cause Court has jurisdiction But when the principal subject is agricultural land, the building or buildings being mere accessories thereto the Small Cause Court will not have jurisdiction CHUNDESSUREE *v* GHEENAH PANDEY 24 W. R., 152

259. ———— *Arrears of rent of homestead, or bastu land Suit for—Provincial Small Cause Courts Act (IX of 1887), sch II, cls 7 and 8*—A Mofussil Small Cause Court

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

has no jurisdiction to entertain a suit for arrears of rent of homestead or bastu land under the provisions of the Provincial Small Cause Courts Act (IX of 1887). UMA CHURN MANDAL *v.* BIJARI BEWAH . . . . I. L. R., 15 Bom., 174

260. ———— *Suit for sums stipulated to be paid for use of private path.*—A suit upon a contract for the payment of a stipulated sum per mensem to the owner for the leave granted by him to the defendants to use a path across his land is cognizable by the Small Cause Court. WOOMA PERSAD SHAW *v.* SHUMSHER SIRDAR [4 W. R., S. C. C. Ref., 10

261. ———— *Suit on instalment-bond for nuzzur or salami.*—Plaintiff sued in a Small Cause Court on an instalment-bond for R81. The bond had been executed for nuzzur or salami contemporaneously with the execution of a pottah and kabuliat, by which the defendants agreed to pay the plaintiff R335 *a year for two years*, as rent for certain land. The pottah and kabuliat had not been registered. A previous suit brought by the plaintiff, under Act X of 1859, had been therefore dismissed, and no oral evidence was admitted to prove the terms of the pottah and kabuliat. *Held* the suit on the bond was properly cognizable by the Small Cause Court as a simple debt due under the bond. It was clearly not for rent, nor was it an abwab or illegal cess; whether it was nuzzur or salami was immaterial. DINANATH MOOKERJEE *v.* DEBNATH MULLICK [5 B. L. R., Ap., 1: 13 W. R., 307

262. ———— *Suit for rent and a sum as penalty for non-payment.*—Where a party sued for R17-8 as rent, and a like sum as penalty for non-payment thereof, it was held that he was in fact suing for a penalty equal to double the amount due, and that a Small Cause Court was competent to entertain the suit. HINGUN SOWDAGUR *v.* BOISTUM CHURN OJAH . 6 W. R., Civ. Ref., 5

263. ———— *Suit for arrears of rent and assessment of rate.*—A suit for arrears of rent of land for which no rent has ever been paid, where the plaintiff also asks for assessment of the rate of rent, is not cognizable by a Small Cause Court. GOPEE NATH GHOSE *v.* KEDAR NATH CHUCKERBUTTY. KEDAR NATH CHUCKERBUTTY *v.* GOPEE NATH GHOSE . . . 23 W. R., 426

264. ———— *Suit for rent—Act XI of 1865, s. 6.*—A suit to assess rent at an increased rate upon the defendants, and for a decree for rent at such rate in respect of land situated in a town, and upon which either a house or shop stands, is not a suit for rent within the meaning of s. 6, Act XI of 1865, and is maintainable in the ordinary Civil Courts, and not in the Small Cause Courts. JOY KISHORE CHOWDHRAIN *v.* NUBEE BUKSH [17 W. R., 178

265. ———— *Suit for rent of land used for building purposes.*—A suit for the rent of land used for building purposes is cognizable in a Mofussil Court of Small Causes. PEAREE BEWAH *v.* NOKOOR KURMOKAR . . . 19 W. R., 308

GOKHUL CHUND CHATTERJEE *v.* MOSAHROO KANDOO . . . . . . 21 W. R., 5

266. ———— *Suit on instalment-bond for arrears of rent.*—A suit upon an instalment bond given for arrears of rent is cognizable in a Small Cause Court. Also a suit by a judgment-debtor to recover money paid by him to be applied in satisfaction of a decree under Act X of 1859, but not so applied by the decree-holder. SHUTT CHURN GHOSAL *v.* MAHOMED ALLY. TARINEE CHURN ROY *v.* GOPAL KISTO ROY [2 W. R., S. C. C. Ref., 5

267. ———— *Suit on document given for arrears of rent—Act XI of 1865, s. 6.*—A suit to recover arrears of rent on a tahood kistbundi, under which defendant had been appointed a tahsildar to collect rents, having been filed before the Munsif, it was returned as being cognizable by the Court of Small Causes The Judge of the latter Court, seeing that the instalment-bond on which the suit was brought was exactly in the form of a kabuliat, and that the defendant was in possession of the land for which the rent was claimed, referred the question of jurisdiction to the High Court, which held that the money which the defendant contracted to pay, being rent, could not be sued for under Act XI of 1865. PEAREE MOHUN ROY CHOWDHRY *v.* ASSAD KHAN . . . . 18 W. R., 444

268. ———— *Suit for rent where there is no contract to pay it.*—A suit was brought in the Small Cause Court by a zamindar against a raiyat for arrears of rent. The plaintiff alleged that he had tendered pottahs which the defendant was bound to accept, and the defendant alleged that the rent specified was such that he was not bound to accept the pottahs. *Held* that the suit was not cognizable by a Court of Small Causes, there being no contract between the parties for the payment of rent. VENKATACHALA REDDIAR *v.* NARAYANA REDDY . . . 4 Mad., 393

269. ———— *Suit for arrears of phulkur.*—A suit for arrears of rent of the description known as phulkur cannot be tried by a Small Cause Court. GOBIND SOOKOOL *v.* GOKOOL BHUKUT . . . . . 23 W. R., 304

270. ———— *Act XI of 1865, s. 6—Jurisdiction—Suit for refund of rent voluntarily paid to a wrong person.*—A Mofussil Court of Small Causes has no jurisdiction under s. 6 of Act XI of 1865 to entertain a suit for a refund of money paid as rent, in which it is found that the payment was made to a wrong person voluntarily, and under no mistake as to that person being entitled to receive it, but with the object of defrauding an intermediate tenure-holder. RAM CHAND DUTT *v.* MOSAI SANTAL [I. L. R., 11 Calc., 738

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

under s. 15 and sch. II, art. 8, of the Provincial Small Cause Courts Act, 1887. A second appeal will lie in such a suit, though the amount or value of the subject-matter of the original suit does not exceed R500. VEDACHALA MUDDALI *v.* RAMASAMI RAJA [I. L. R., 22 Mad., 229

Contra, SOUNDARAM AYYAR *v.* SENNIA NAICKAN [I. L. R., 23 Mad., 547

decided by a Full Bench and overruling the above case.

279. ———————— *Suit by tenant for excess payment of rent—Civil Procedure Code (Act XIV of 1882), s. 586—Landlord and tenant—Bengal Tenancy Act (VIII of 1885), s. 144.*—A suit between landlord and tenant of the recovery by the tenant of excess payments taken by the landlord in respect of the rent of the holding, and not exceeding R500, is a suit cognizable by the Small Cause Court, and under s. 586 of the Civil Procedure Code no second appeal lies. There is nothing in s. 144 of the Bengal Tenancy Act to override the provisions of s. 586 of the Civil Procedure Code, as it determines only the venue and has no bearing upon the nature of the suit. RANGO ROY *alias* RUNG LAL ROY *v.* HOLLOWAY [I. L. R., 26 Calc., 842 4 C. W. N., 95

280. ———————— *Suit by a landlord against a tenant for a certain sum payable by him out of the rent to a third person by assignment—Whether such a suit is one for rent or for damages.*—*Held* (by the Full Bench) that a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages. *Rutnessur Biswas* v. *Hurish Chunder Bose, I. L. R., 11 Calc., 221,* referred to. *Mohabut Ali* v. *Mahomed Faizullah, 2 C. W. N., 455,* approved of. BASANTA KUMARI DEBYA *v.* ASHUTOSH CHUCKERBUTTY . . . . I. L. R., 27 Calc., 67 [4 C. W. N., 3

281. ———————— *Suit for rent in kind or its money value—Suit for rent—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 35—Bengal Tenancy Act (VIII of 1885), s 3, cl 5.*—A suit for produce rent or its money value is a suit for rent under the Bengal Tenancy Act, and not a suit for damages for breach of contract; such a suit is therefore not cognizable by a Provincial Small Cause Court. *Tajuddin Khan* v. *Ram Parshad Bhagat, I. L. R., 1 All., 217,* followed. *Lachman Parshad* v. *Hoolas Mahton, 2 B. L. R., Ap. 27 : 11 W. R., 151 ; Mullick Amanut Ali* v. *Ok'oo Pasi, 25 W. R., 140;* and *Jumna Doss* v. *Gausee Meah, 21 W. R., 124,* referred to. SKOONA MEHTA *v.* RAJANI BISWAS [1 C. W. N., 55

282. ———————— *Landlord and tenant—Suit for rent by an assignee of landlord whether suit for rent or money—Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 8.*—*K* and *U* owned in equal shares some lands appertaining to a talukh; in execution of a decree, *K*'s share in all the lands and *U*'s share in some of the lands were sold and purchased by one *B*, who in Assar 1301 sold to the plaintiffs half of the land and the whole of the rent; plaintiffs again sold to the *pro formâ* defendants half of the lands which they had purchased and also half of the arrears for 1300. Plaintiffs brought a suit for recovery of the whole rent of 1300, the persons to whom they had sold a portion of those arrears being made *pro formâ* defendants. The claim was not exceeding R500 in value. *Held* that the suit brought by the assignee against the tenant is a suit to recover the rent within the meaning of art. 8 of sch. II of the Provincial Small Cause Courts Act. That the money was due as rent at the time of the assignment and the assignment did not deprive it of that character, so far, at all events, as the tenant was concerned. *Sama Soonduree Dossee* v. *Brindabun Chunder Mozoomdar, Marsh., 199 ; Lall Mohun Singh* v. *Troyluckonath Ghose, 14 W. R., 456 ;* and *Reedoy Monee* v. *Sibbold, 15 W. R., 344,* followed. *Lalla Bhugwan Sahoy* v. *Sungessur Chowdhry, 19 W. R., 431,* distinguished. MUNSAR *v.* LOKNATH ROY . 4 C. W. N., 10

283. ———————— *Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 3, sub-s. 5—Provincial Small Cause Courts Act, sch. II, art. 8.*—*Held* by the Full Bench (BANERJEE J., dissenting) that a suit brought by an assignee of arrears of rent, after they fell due, for the recovery of the amount due, is a suit for rent, and therefore excepted from the cognizance of the Court of Small Causes. SRISH CHUNDER BOSE *v.* NACHIM KAZI [I. L. R., 27 Calc., 827 4 C. W. N., 357

MOHENDRA NATH KALAMAREE *v.* KAILASH CHANDRA DOGRA . . . 4 C. W. N., 605

284. Sale-proceeds—*Suit for refund of moneys paid under order of Court.*—A suit to recover a refund of moneys paid under an order of Court is not cognizable by a Court of Small Causes. GRISH CHUNDER MUNDUL *v.* DOORGA DOSS [I. L. R., 5 Calc., 494

285. ———————— *Act XI of 1865—Civil Procedure Code, 1882, s. 295—Suit for refund of assets paid in execution of decree.*—A suit under s. 295 of the Code of Civil Procedure to compel refund of assets paid in execution of a decree to a person not entitled thereto is cognizable by a Court of Small Causes constituted under Act XI of 1865. *Shahi Ram* v. *Shib Lal, I. L. R., 7 All., 378,* dissented from. HARIHARA *v.* SUBRAMANYA [I. L. R., 9 Mad., 250

286. ———————— *Second appeal—Sale-proceeds, Suit for share of.*—A suit by one decree-holder against another for the money received

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2 JURISDICTION—*continued.*

by the latter on a division between them of the proceeds of an execution-sale as his share of such proceeds, under the order of the Court executing the decrees, is a suit of the nature cognizable in a Court of Small Causes and consequently, where the amount of such money does not exceed five hundred rupees, no second appeal lies in such suit MATA PRASAD *v* GAURI . . I. L. R., 3 All, 59

287. ——— *Civil Procedure Code, 1882, s 295—Suit for refund of proceeds of execution-sale*—*S* and *L* held mortgage-bonds executed in their favour by the same person. *S*'s bond was dated the 10th June 1882, and was registered, the registration being compulsory, *L*'s bond was of prior date, the 30th December 1880, and was *not registered, the registration being optional* Both instituted suits on their bonds against the [illegible] pro- [illegible] on [illegible] were [illegible] ally between the parties by an order dated the 1st May 1883, notwithstanding that *S* claimed the whole on the ground that he was an encumbrancer under a decree passed on a registered instrument, and therefore entitled to priority. *S*, being dissatisfied with this order, brought a suit to recover from *L* the moiety of the sale-proceeds paid to him *Held* that the suit, being one to compel the defendant to refund assets of an execution-sale which he was not entitled to receive, and to set aside the order of the Court executing the decree, which directed the payment of the assets to him, was expressly allowed to be brought [illegible]

288. ——— *Suit for money paid for property sold where judgment-debtors had no interest—Provincial Small Cause Courts Act (IX of 1887), s 15*—*Held* that a suit to re- [illegible]

Neither art. 2 nor art. 35, cl (j), sch II of Act IX of 1887, excludes such a suit from the cognizance of the Small Cause Courts. PRASANNA KUMAR KHAN *v.* UMA CHARAN HAZRA . . 1 C W. N., 140

289 ——— *Proceeds of immoveable property—Jurisdiction—Act XI of 1865, s. 6—Money had and received—Sale of tenure—Co-sharers*—The plaintiff and the defendant were co-owners of a certain talukh. The zamindar brought a suit for arrears of rent of the talukh against the defendant, obtained a decree, and in execution of that decree sold the tenure. The proceeds of the sale, after [illegible] the [illegible] suit [illegible] such [illegible] Court [illegible] dissented from. RAM COOMAR SEN *v* RAM COMUL SEN . . . I. L. R., 10 Calc, 388

290. ——— Salvage—*Suit for salvage—Abandonment of property saved*—A suit for salvage, even when the saved property has been abandoned by those in charge of it, is not cognizable by a Court of Small Causes KISHORE SINGH *v* GUNNESH MOOKERJEE . . . . 9 W. R, 252

291 ——— Tax—*Suit for amount of trade impost—Suit for rent*—A Court of Small Causes [illegible] MUDELY [illegible]

292 ——— [illegible] mere denial by the defendant of the plaintiff's right [illegible] of the [illegible] that a [illegible] him his [illegible] suit, his [illegible] SUBBU [illegible] 2 Mad., 184

293. ——— *Question incidentally arising.*—If a *bonâ fide* question of title arises incidentally in a Small Cause suit, the Court should determine it. ALAGIRISAMI NAIKER *v.* INNASI UDAYAN . . . I. L. R., 3 Mad., 127

294. ——— *Right to cut trees*—A Court of Small Causes may try incidental questions of title which are indispensable to the decision of the claim before it,—*e g*, a right to land on which depends a party's right to cut trees. RADHA CHURN GANGOOLY *v.* GUDADHUR BAHADOOR [15 W. R., 166

295. ——— *Suit for produce of land*—If the right of the plaintiff be a question raised in a suit brought in a Court of Small Causes for recovery of value of produce, it is quite open to the Judge of the Court of Small Causes to try it and determine it incidentally to the main question in the suit—the right to the produce claimed. DARMA AYYAN *v* RAJAPA AYYAN [I. L. R., 2 Mad., 181

296. ——— *Suit for damages for loss of produce.*—The jurisdiction of a Small

SMALL CAUSE COURT, MOFUSSIL —*continued.*

2. JURISDICTION—*continued.*

Cause Court is not ousted in a suit for damages for carrying away the produce of certain land when the defendant sets up title to the land in answer to the claim. *Per* TURNER, *C.J.*—When a suit is brought in a form in which it is cognizable by a Small Cause Court under Act XI of 1865, the Court cannot decline jurisdiction if it appears that incidentally a question of title is raised which it has not jurisdiction to determine for any other purpose than the decision of the suit before it. Under such circumstances, the Court may, however, properly grant a reasonable adjournment that the question may be litigated and determined by the proper tribunal. MANAPPA MUDALI *v.* MCCARTHY . I. L. R., 3 Mad., 192

297. ——— *Act XLII of 1860.*—Plaintiff sued defendant in the Small Cause Court for damages for having cut down and removed trees from plaintiff's land. Defendant pleaded that he was entitled to do so under his pottah. *Held* the Court had jurisdiction to try the question of the genuineness of the pottah. RAGHU RAM BISWAS *v.* RAM CHANDRA DOBAY

[B. L. R., Sup. Vol., 34 : W. R., F. B., 127

SHUMBHOO CHOWDHRY *v.* COMBS . 2 W. R., 179

RAM JEEBUN KOYEE *v.* SHAHAZADEE BEGUM [9 W. R., 336

SUNKUR LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN . . . . . . 18 W. R., 104

But *see* INAYAT KHAN *v.* RAHMAT BIBI [I. L. R., 2 All., 97

and PACHOO RAREE *v.* GOOROO CHURN DASS [15 W. R., 556

298. ——— *Question of amount due on bond mortgaging land.*—Where an ijara constituted a mortgage of the rents as a security for an amount due on a bond, with a stipulation that the balance, after paying the jumma payable by the mortgagor, should be applied by the mortgagee in payment of the bond,—*Held* that the Small Cause Court had jurisdiction to try what amount was due on the bond, and also to try the question of payment by means of the rent assigned. MOHIMA CHUNDER MOOKERJEE *v.* RAM CHURN ROY [6 W. R., Civ. Ref., 16

299. ——— *Suit for arrears of malikana allowance—Act XI of 1865, s. 6.*—*A* sold a share in immoveable property to *M* by a registered deed of sale, which contained the following provision: "The said vendee is at liberty either to retain possession himself or to sell it to some one else, and he is to pay R25 of the Queen's coin to me annually (as malikana), which he has agreed to pay." *M* mortgaged the property to *B*, who obtained possession; and, after the mortgage, the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued *M* and *B* to recover arrears of malikana, the amount sued for being less than R500. *Held*, upon a preliminary objection made with reference to s. 586 of the Civil Procedure Code, that the intention of the Legislature as expressed in s. 6 of the Mofussil Small Cause Courts Act (XI of 1865) was that suits directly and immediately involving questions of title to immoveable property should not be cognizable by the Small Cause Courts; that in the present suit such a question was directly involved; and that consequently s. 586 of the Code had no application, and a second appeal would lie. *Mohamed Karamut-oollah* v. *Abdool Majeed*, 1 *N. W.*, 205, and *Bhawan Singh* v. *Chatter Kuar, Weekly Notes, All.*, 1882, *p.* 114, referred to. *Pestonji Bezonji* v. *Abdool Rahiman, I. L. R.*, 5 *Bom.*, 463; *Qutub Husain* v. *Abul Husain, I. L. R.*, 4 *All.*, 134; and *Kadureesur Mookerjea* v. *Gooroo Churn Mookerjea*, 2 *C. L. R.*, 388, distinguished. CHURAMAN *v.* BALLI [I. L. R., 9 All., 561

300 ——— *Suit for arrears of rent.*—In a suit for arrears of rent a Small Cause Court may decide whether the renting has taken place, and pass judgment for the amount claimed, without adjudicating upon the plaintiff's title. SUBBIRAMANIYA AYYAN *v.* VELAYUDA DEVAR [1 Mad., 212

301. ——— *Denial of title.*—A Small Cause Court has no jurisdiction to try a suit for rent where the defendant *bonâ fide* sets up by way of defence that the title to the land in respect of which the rent was claimed passed from the plaintiff to others since the creation of the tenancy between the plaintiff and defendant, and that the rent claimed had accrued due after the determination of the plaintiff's title as landlord. VENKATACHALAM *v.* THIMMA NAIKAN . . . . 5 Mad., 64

302. ——— *Mahomedan law.*—The seven heirs of a deceased Mahomedan, under an agreement among themselves, took equal shares of 14 annas of his estate and allotted 2 annas to rehalallah, *i.e.*, devoted the profits to charitable purposes under the management of one of their number. On the death of such manager, three of the heirs sued his tenant for a proportion of rent equal to their shares and three-sevenths on account of rehalallah. The remaining heirs opposed the claim in regard to rehalallah, which they said the plaintiffs had no right to collect, and which could only be collected by the mutwali appointed by the deceased manager, urging that, if the Court did not admit the appointment of the mutwali, it would have to decide whether collections should be made by the heirs in equal shares or in shares allowed by the Mahomedan law. *Held* that the suit ought not to be entertained by the Court of Small Causes. KOREEM BUX *v.* NOMEERO . . . . . 20 W. R., 349

303. ——— Trusts—*Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 18—Gift, Construction of—Hindu law—Suit relating to a trust.*—A Hindu executed in favour of his daughter an instrument in the following terms: "I have hereby given to you to be enjoyed as stridhanam after my death 2,320 fanams out of 6,000 fanams which remain

SMALL CAUSE COURT, MOFUSSIL —*continued*

2 JURISDICTION—*continued*

as kanom on the land T . The proportionate rent on ..320 fanams is ..65 paras This quantity of paddy . shall be enjoyed by you and your sons and grandsons hereditarily by receiving the same from my sons" After certain clauses restricting the mode of enjoyment and the power of alienation the instrument proceeded, "in the event of the said kanom being paid, that money shall be received by my sons, and shall be invested in some other property, which may be approved of by you and your sons and by my sons, and from that property you may receive income yearly and enjoy the same In a suit by a grandson of the donee to recover his share of the income, —*Held* that the suit "related to a trust" within the meaning of the Provincial Small Cause Courts Act, sch II, art. 18 KRISHNA AYYAN *v* VYTHIANATHA AYYAN

[I. L. R, 18 Mad., 252

304.————————*Provincial Small Cause Courts Act (IX of 1887), sch II, art 18—Suit by temple manager against his predecessor for damage sustained by temple—Suit relating to a trust.*—A suit by the manager of a temple against his predecessor in office for damages sustained by the temple owing to the negligence of the defendant is not cognizable by a Court of Small Causes. KRISHNAYYAR *v.* SOUNDARARAJA AYYANGAR

[I. L. R., 21 Mad., 245

305 ————————*Suit against person collecting or receiving subscriptions for building a temple—Trustee—Civil Procedure Code (Act XIV of 1882), s 30.*—A person collecting [illegible] be filed under s. 30 of the Civil Procedure Code, in a Subordinate Judge's Court, and not in a Small Cause Court. MAHOMED NATHUBHAI *v.* HUSEN

[I. L. R., 22 Bom., 729

306 ————Wages—*Suit for wages against European British subject.*—A suit for wages under Rs50, alleged to be due from a European British subject to a native can be tried in a Small Cause Court in the mofussil. RAMJAN BEG *v.* COOK

[6 B. L. R., Ap., 91 ; 14 W. R., 428

307 ————Wrongful distraint—*Suit to recover value of goods distrained for rent under Mad Act VIII of 1865, s. 27—Parties—Procedure*—A suit to recover the value of goods distrained for rent under Madras Act VIII of 1865, and forcibly carried away from the person distraining, may be maintained in a Court of Small Causes under s. 27 of the Act. The suit may be brought either by the landlord or the person authorized to distrain A petition and summons and order, after hearing the parties and their evidence, appear to be the fitting mode of exercising the jurisdiction. VADAMALAI THIRUVANA TEVAR *v.* CARUPPEN SERVAI ZAMINDAR OF SAITTUR *v.* CARUPPEN SERVAI

[4 Mad., 401

SMALL CAUSE COURT, MOFUSSIL —*continued*

2 JURISDICTION—*concluded.*

308 ———— ————*Provincial Small Cause Courts Act (IX of 1887), art. 35 (j)—Madras Rent Recovery Act (Mad Act VIII of 1865), s 15—Civil Procedure Code (Act XIV of 1882), s 646B—Suit for the value of property illegally retained—Jurisdiction of Small Cause Courts*—Certain moveable property having been distrained under s 15 of the Rent Recovery Act (Madras), 1865, such distraint was set aside and the property ordered to be restored to the owners That order not having been carried out, the owners filed suits on the Small Cause side of the Courts of the Subordinate Judge and the District Munsif for the value of the property so illegally retained. *Held* that the suits were not excepted from the jurisdiction of the Small Cause Courts by art 35 (j) of sch II of the Provincial Small Cause Courts Act, 1887. CHAKRADHARUDU *v.* VENKTIARAMAYYA

[I. L. R., 22 Mad., 457

3 PRACTICE AND PROCEDURE

(*a*) EXECUTION OF DECREE

309 ————Power of execution—*Change of jurisdiction*—A Small Cause Court in which a decree is passed is competent to entertain an application for its execution, even if the debtor's residence and moveable property are situate in a place which has since the decree been excluded from that Court's jurisdiction In such execution the course to be pursued was that prescribed by ss 285 and 286, Code of Civil Procedure, 1859 KODOO MUNDUL *v.* SHUSHEE SHIKHUR SIRCAR . 16 W. R., 227

See ANONYMOUS

[B L R., Sup. Vol., 888 : 9 W. R., 175

Contra, MANSUK MOSUNDAS *v.* SHIVRAM DEVISING . . . I. L. R., 2 Bom., 532

GRISH CHUNDER KUR *v.* KRISTO CHUNDER GHOSE . . . *19 W. R., 123*

ANONYMOUS . . 3 W. R., S. C. C. Ref., 7

310 ————Mode of execution—*Interest in moveable property, Power to sell —Act XI of 1865, ss 6 and 20*—A Small Cause Court can sell the undivided right, title, and interest of a deceased debtor, to which the defendants succeeded, in the moveable property in satisfaction of a decree obtained against the defendants without infringing the second proviso of s 6 of Act XI of 1865 Until the judgment creditor has exhausted that mode of proceeding, he is not entitled to proceed against the debtor's immoveable property under s. 20 of the Act AHOBALASAMI CHETTY *v.* VENKATA KRISTNAMMA

[5 Mad., 275

311 *Execution of decree—Suit against member of undivided family*—A Court of Small Causes has not power to do more in execution of a decree against an undivided member of a Hindu family than issue process for the attachment

SMALL CAUSE COURT, MOFUSSIL —*continued*.

3. PRACTICE AND PROCEDURE—*continued*.

and sale of the defendant's undivided right, title, and interest in the family moveable property. It would be for the purchaser at such a sale to obtain a partition. IYAHVIEN *v.* CHITHAMBARIEN [5 Mad., 312

312. ——— *Act XI of 1865, ss. 19 and 20—Rights and interests of judgment-debtor under bond pledging immoveable property.*—The rights and interests of a judgment-debtor under a mortgage bond hypothecating to him immoveable property are not saleable by a Court of Small Causes. A sale of such rights by a Court of civil judicature, by virtue of a certificate issued under the provisions of s. 20 of Act XI of 1865, is the proper mode of execution. BUDDOO MULL *v.* MAHAROOF [6 N. W., 129

313. ——— *Power of Court to attach salary—Civil Procedure Code, 1882, ss. 223, 268.*—A Mofussil Court of Small Causes must adopt the machinery of s. 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court therefore cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally* v. *Ashotosh Gangooly, 3 C. L. R., 30*, followed. PARBATI CHARAN *v.* PANCHANAND . I. L. R., 6 All., 243

314. ——— Transfer for execution—*Act XI of 1865, s. 20—Transfer to, and execution by, Munsif's Court—Sale of land—Certificate not filed—Title of purchaser.*—A decree passed by a Subordinate Judge's Court on the Small Cause side was, after the abolition of the said Court, transferred by the District Court for execution to a District Munsif's Court. The District Munsif, on the application of the creditor, attached and sold certain land. No application was made by the creditor for a certificate as provided by s. 20 of Act XI of 1865, nor was any objection taken to the execution proceedings by the debtor. The creditor, having purchased the land, sold it to *N*, who, in attempting to take possession, was resisted by the debtor. In a suit to obtain possession of the land,—*Held* that *N* was entitled to recover. NAGIREDDI *v.* RAMANNA [I. L. R., 7 Mad., 592

315. ——— *Act XI of 1865, s. 20—Civil Procedure Code, 1882, s. 223—Small Cause decree of Subordinate Judge—Execution against immoveable property—Co-ordinate jurisdiction of Subordinate Judge and District Munsif—Execution by District Munsif.*—The Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A Small Cause decree of the former Court having been sent by the Subordinate Judge to the Court of the District Munsif for execution against the said property under the provisions of s. 20 of Act XI of 1865, the application for execution was rejected by the Munsif on the ground that this procedure was illegal. *Held* that s. 20 of Act XI of 1865 was not modified by s. 223 of the Code of Civil Procedure, and that the Munsif's Court was therefore bound to execute the decree. KAHANARAMA *v.* RANGA [I. L. R., 8 Mad., 8

(*b*) NEW TRIALS AND REVIEWS.

316. ——— Act XI of 1865, s. 21—*Review—Limitation Act, 1877, art. 173.*—S. 21 of Act XI of 1865 held to be in force, notwithstanding the right of review given to Small Cause Courts in the mofussil by s. 623 of the Code of Civil Procedure, 1882. Where the circumstances of a case admit of a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865; but where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. MADON MOHON PODDAR *v.* PURNO CHUNDRA PURBOT [I. L. R., 10 Calc., 297

317. ——— *Civil Procedure Code, 1877, ss. 623, 624—Power to grant new trial of case tried by predecessor.*—A Judge of a Mofussil Small Cause Court was held to have jurisdiction to direct a new trial of a case tried by his predecessor, s. 21 of Act XI of 1865 not having been repealed by the Civil Procedure Code, 1877. *Per* GARTH, *C.J.*—The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in s. 624 of the Code of Civil Procedure. SHUMSHER ALLY *v.* KURKUT SHAH [I. L. R., 6 Calc. 236 : 6 C. L. R., 549

318. ——— *New trial of ex-parte case—Re-opening of case against all the defendants.*—It may be competent to the Judge of a Small Cause Court on hearing one of the defendants to set aside an *ex-parte* decree as to all, if justice requires it, *e.g.*, if the objection is one which is common to the case of all; but he is not bound, because the decree is set aside as to one defendant, to interfere with the decision against others who do not object. DOOKHEE KHAN *v.* RAJESSUREE RANEE [15 W. R., 371

319. ——— *Fraudulent confession of judgment—New trial.*—A Small Cause Court Judge may on the ground of fraud and false personation grant a new trial where judgment has been passed on a confession of judgment. IN THE MATTER OF HURO MONEE DOSSEE . 17 W. R., 48

320. ——— *Application for new trial, Ground for—Computation of time prescribed for application.*—An error as to date in the summons to plaintiff's witnesses is sufficient ground for setting aside an order dismissing his suit. The time prescribed by Act XI of 1865, s. 21, for an application for a re-trial is exclusive of the date on which the suit was dismissed. BIJOY GOBIND DEB *v.* MUDDUN RAM PAL . . . 18 W. R., 454

321. ——— *Third application for new trial.*—A third application for a new trial in-

3. PRACTICE AND PROCEDURE—*continued.*

… sale of the defendant's undivided right, title, and … est in the family moveable property. It would … for the purchaser at such a sale to obtain a parti… IYAHVIEN *v.* CHITHAMBARIEN [5 Mad., 312

312. ———— *Act XI of 1865, ss. 19 and 20—Rights and interests of judgment-debtor under bond pledging immoveable property.*—The rights and interests of a judgment-debtor under a mortgage bond hypothecating to him immoveable property are not saleable by a Court of Small Causes. A sale of such rights by a Court of civil judicature, by virtue of a certificate issued under the provisions of s. 20 of Act XI of 1865, is the proper mode of execution. BUDDOO MULL *v.* MAHAROOF [6 N. W., 129

313. ———— *Power of Court to attach salary—Civil Procedure Code, 1882, ss. 223, 268.*—A Mofussil Court of Small Causes must adopt the machinery of s. 223 of the Civil Procedure Code in all cases where execution is sought against persons or property outside its local jurisdiction. Such a Court therefore cannot attach the salary of a public officer where the same is disbursed outside its local jurisdiction. *Hossein Ally* v. *Ashotosh Gangooly*, 3 *C. L. R.*, 30, followed. PARBATI CHARAN *v.* PANCHANAND . I. L. R., 6 All., 243

Transfer for execution—

314. ———— *Act XI of 1865, s. 20—Transfer to, and execution by, Munsif's Court—Sale of land—Certificate not filed—Title of purchaser.*—A decree passed by a Subordinate Judge's Court on the Small Cause side was, after the abolition of the said Court, transferred by the District Court for execution to a District Munsif's Court. The District Munsif, on the application of the creditor, attached and sold certain land. No application was made by the creditor for a certificate as provided by s. 20 of Act XI of 1865, nor was any objection taken to the execution proceedings by the debtor. The creditor, having purchased the land, sold it to *N*, who, in attempting to take possession, was resisted by the debtor. In a suit to obtain possession of the land,—*Held* that *N* was entitled to recover. NAGIREDDI *v.* RAMANNA [I. L. R., 7 Mad., 592

315. ———— *Act XI of 1865, s. 20—Civil Procedure Code, 1882, s. 223—Small Cause decree of Subordinate Judge—Execution against immoveable property—Co-ordinate jurisdiction of Subordinate Judge and District Munsif—Execution by District Munsif.*—The Court of a Subordinate Judge and that of a District Munsif had jurisdiction over certain immoveable property. A Small Cause decree of the former Court having been sent by the Subordinate Judge to the Court of the District Munsif for execution against the said property under the provisions of s. 20 of Act XI of 1865, the application for execution was rejected by the Munsif on the ground that this procedure was illegal. *Held* that s. 20 of Act XI of 1865 was not modified by s. 223 of the Code of Civil Procedure, and that the Munsif's Court was therefore bound to execute the decree. KAHANARAMA *v.* RANGA [I. L. R., 8 Mad., 8

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316. ———— *Act XI of 1865, s. 21—Review—Limitation Act, 1877, art. 173.*—S. 21 of Act XI of 1865 held to be in force, notwithstanding the right of review given to Small Cause Courts in the mofussil by s. 623 of the Code of Civil Procedure, 1882. Where the circumstances of a case admit of a new trial, an application for such new trial is governed by s. 21 of Act XI of 1865; but where the circumstances of a case do not admit of a new trial, but do admit of a review, then the time within which an application for review should be made is to be governed by art. 173, sch. II of Act XV of 1877. MADON MOHON PODDAR *v.* PURNO CHUNDRA PURBOT [I. L. R., 10 Calc., 297

317. ———— *Civil Procedure Code, 1877, ss. 623, 624—Power to grant new trial of case tried by predecessor.*—A Judge of a Mofussil Small Cause Court was held to have jurisdiction to direct a new trial of a case tried by his predecessor, s. 21 of Act XI of 1865 not having been repealed by the Civil Procedure Code, 1877. *Per* GARTH, *C.J.*—The Judge, however, in dealing with applications for new trial under s. 21, should have regard to the rule laid down in s. 624 of the Code of Civil Procedure. SHUMSHER ALLY *v.* KURKUT SHAH [I. L. R., 6 Calc. 236 : 6 C. L. R., 549

318. ———— *New trial of ex parte case—Re-opening of case against all the defendants.*—It may be competent to the Judge of a Small Cause Court on hearing one of the defendants to set aside an *ex-parte* decree as to all, if justice requires it, *e.g.*, if the objection is one which is common to the case of all; but he is not bound, because the decree is set aside as to one defendant, to interfere with the decision against others who do not object. DOOKHEE KHAN *v.* RAJESSUREE RANEE [15 W. R., 371

319. ———— *Fraudulent confession of judgment—New trial.*—A Small Cause Court Judge may on the ground of fraud and false personation grant a new trial where judgment has been passed on a confession of judgment. IN THE MATTER OF HURO MONEE DOSSEE . 17 W. R., 48.

320. ———— *Application for new trial, Ground for—Computation of time prescribed for application.*—An error as to date in the summons to plaintiff's witnesses is sufficient ground for setting aside an order dismissing his suit. The time prescribed by Act XI of 1865, s. 21, for an application for a re-trial is exclusive of the date on which the suit was dismissed. BIJOY GOBIND DEB *v.* MUDDUN RAM PAL . . . 18 W. R., 454

321. ———— *Third application for new* … —A third application for a new trial in

SMALL CAUSE COURT, MOFUSSIL —*continued*

3 PRACTICE AND PROCEDURE—*continued.*

a Court of Small Causes is not admissible under s 21, Act XI of 1865. DHUNNOO CHOWDHRY *v* BUKSHUN [12 W. R, 266

322. ——— *Non-appearance of defendant—Application to set aside ex-parte decree* —There is nothing in the first part of s. 21 of Act XI of 1865 showing that an application in accordance with that portion of the section is limited to the first occasion on which a defendant puts in an appearance to a suit Where therefore a case is adjourned from the date fixed in the summons to any later date, and on such later date a defendant is prevented by sufficient cause from appearing, and in default of

[I. L. R., 4 Calc, 318 : 3 C. L R, 482

323. ——— *Procedure—Deposit of amount of decree and costs* —A defendant desiring a new trial of a case decreed against him in a Small Cause Court must deposit in Court the amount of the decree passed against him and costs, at the time of giving notice of his intention to apply for the new trial A subsequent deposit, though made within

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period of seven days from the date of the decision" apply to cases in which the sittings of the Small Cause Court are not held consecutively by reason of the same Judge being the Judge of more than one Court. KAILAS CHANDRA SANNEL *v* DOWLAT SHEIKH . 5 B. L R., Ap, 57 : 14 W R, 42

by instalments, must be deposited in Court, under s. 21 of Act XI of 1865 NAVROJI PESTANJI *v* MANSUKH JAYACHAND . 5 Bom, A. C., 70

325. ——— *Deposit of costs* —Act XI of 1865, s. 21, does not require a plaintiff applying for a new trial to deposit the costs of the defendants. MOHIMA CHUNDER ROY *v*. HURNATH CHUNGO . . . . . 18 W. R., 446

326. ——— *Notice of applica-*

new trial cannot be entertained. IN RE PITAMBAR SADHU KHAN . . . 6 B. L. R., 390 note

S. C. PETUMBER SHADOO KHAN *v* DOYA MOYEE DOSSEE . . . . 12 W R., 17

327. ——— *Practice—Notice of application—Review—Civil Procedure Code (Act*

grounds for granting a review the applicant is entitled to proceed under s. 623 of the Code of Civil Procedure without resorting to Act XI of 1865 RATAN KRISHEN PODDAR *v* RAGHOO NATH SHAHA [I. L. R., 8 Calc., 287 : 10 C L R, 275

See ISAN CHUNDER BANERJEE *v* LUCHUN GOPE KEMP *v* PREMNARAIN SINGH [I. L. R., 5 Calc, 699 : 5 C. L. R., 539

328 ——— *"Next sitting of the Court"—Judge holding two offices* —Where the same person holds the office of Judge in two Small Cause Courts, and sits for the first half of the month

the Judge sat again in that Court MADHUB CHUNDER BISWAS *v*. OKHOY CHUNDER BISWAS GOPEE MOHUN BANERJEE *v* SREEKANTO BOSE [13 W R., 103

329 ——— *Application before execution of decree had been taken out for new trial* —An

Court on the

obtained, on

been executed for enforcing the decree, was held to fall within the first of the two provisions in s 21, Act XI of 1865 SHOJONEE DOSSIA *v* DHURONEE DHUR GHOSE . . . 16 W. R., 226

of the Court she would file her grounds for a new

[15 W. R., 281

331. ——— *Ex-parte decree obtained on forged bond.*—Petitioner specially regis-

of execution on the ground that the bond was a forgery Execution was stayed on security given, a re-hearing was granted in the presence of both parties, the original decree was reversed, and a fresh decree given. *Held* that in this state of the facts the

Small Cause Court had jurisdiction to grant a review and fresh decree, and that the procedure laid down in s. 21 of Act XI of 1865 was followed as far as it was applicable. IN THE MATTER OF MOHUN SAHOO [11 W. R., 245

332. ———— *Second application for new trial.*—An application having been made to a Small Cause Court Judge to set aside an *ex-parte* decree, the Judge found from the record that the defendant had been personally served with a summons. He accordingly requested the pleader to tell his client to be present three days after to be examined. As neither the applicant nor his pleader was present on that date, the Judge rejected the application without issuing notice on the opposite party. A second application was then made under s. 21, Act XI of 1865. *Held* that the communication to the pleader was an informal proceeding, and as applicant had not been summoned in due form, his application should not have been rejected in his absence, and the Judge was bound to hear the second application. GOPAL CHUNDER ROY *v.* ARMAN SHAIKH . . 15 W. R., 402

333. ———— *Application for new trial—Deposit of decretal amount or security—Provincial Small Cause Courts Act (IX of 1887), s. 17.*—It is a condition precedent to the granting of a new trial that in accordance with the provisions of s. 17 of the Provincial Small Cause Courts Act, 1887, an applicant should at the time of presenting his application for new trial deposit in Court the decretal amount or tender security for payment of the same. *Ramasami* v. *Kurisu, I. L. R., 13 Mad., 178,* dissented from. JOGI AHIR *v.* BISHEN DAYAL SINGH . . . I. L. R., 18 Calc., 83

Reviews of judgment of a Small Cause Court as distinguished from new trials are now governed by s. 623 of the Civil Procedure Code, 1882.

334. ———— *Provincial Small Cause Courts Act (IX of 1887), s. 17—Deposit of costs—Civil Procedure Code, 1882, ss. 623 and 624—Power of Judge to review order of predecessor.*—On 23rd February 1888 the Subordinate Judge of Tinnevelly dismissed with costs a Small Cause suit on the ground that the plaintiff had not secured the attendance of his witnesses. On 29th February the plaintiff presented a petition for review on which notice was directed to issue, but he did not deposit in Court the amount of the costs payable under the decree. On 17th April the petition having come on for hearing, the Judge directed that the petitioner should "first" deposit the amount of the defendant's costs under s. 17 of the Provincial Small Cause Courts Act, which was accordingly done on the following day. On 21st April the petition, which proceeded on grounds other than those mentioned in s. 624 of the Code of Civil Procedure, came on for hearing before the Officiating Subordinate Judge, who had assumed charge of the Court between the last-mentioned dates: he entertained the petition, but dismissed it. The plaintiff preferred a revision petition against the order dismissing his petition. *Held* by the Full Bench, following the cases of *Karoo Singh* v. *Deo Narain Singh, I. L. R., 10 Calc., 80,* and *Fazal Biswas* v. *Jemadar Sheikh, I. L. R., 13 Calc., 231,* that, having regard to the provisions of s. 624 of the Code of Civil Procedure, the Officiating Subordinate Judge had jurisdiction to hear and determine the case on review. *Held* by PARKER and WILKINSON, *JJ.*, that the provisions of s. 17 of the Provincial Small Cause Courts Act as to the deposit of costs on an application for review are not mandatory, but merely directory. RAMASAMI *v.* KURISU . . I. L. R., 13 Mad., 178

(c) REFERENCE TO HIGH COURT.

References to the High Court are now made under s. 617 of the Civil Procedure Code of 1882 which has been substituted for s. 22 of Act XI of 1865. The substituted section is of wider application than s. 22, and embraces questions arising in execution of decree as well as questions in a suit, which it was formerly held could not be referred.

See SUROOP CHUNDER PATRE *v.* JADOO MOYTEE [5 W. R., S. C. C. Ref., 7

ANAND CHANDRA MAZUMDAR *v.* GOBARDHAN KHAN . . . B. L. R., Sup. Vol., 457 [5 W. R., S. C. C. Ref., 19

KAMINEE SOONDUREE CHOWDHRAIN *v.* MUDHOO SOODUN MOOKERJEE . . 21 W. R., 376

BANK OF BENGAL *v.* CURRIE [3 B. L. R., 396 : 12 W. R., 432

As to what is to be referred—

See GUJENDRO MOHUN SHAHA *v.* EASTERN BENGAL RAILWAY COMPANY . . 18 W. R., 145

and how the reference is to be made—

DINONATH ADDY *v.* WELLER . 7 W. R., 16

335. ———— Ground for reference—*Application of parties.*—A Small Cause Court should not make a reference on a simple point merely on the application of the parties, unless it entertains a doubt upon the question. HURISH CHUNDER TALAPUTTUR *v.* O'BRIEN . . 14 W. R., 248

336. ———— Questions arising on application for new trial—*Act X of 1867, s. 1—Act XI of 1865, s. 22.*—When the judgment of a Small Cause Court is called in question by one of the parties on a point of law, such as that damages have been assessed on a wrong principle, his proper course is to apply for a new trial. The facts not being disputed, the Judge may grant a new trial as to what amount of damages were sustained; and in determining that question, he may alter his opinion as to the principle on which damages ought to be assessed, and upon the new trial assess them on the proper principle. *A question of law arising on an application* for a new trial was a question which might be referred to the High Court for its opinion as a question within the meaning of s. 1, Act X of 1867, arising at any point in the proceedings previous to the hearing of a suit. The hearing in a new trial is a hearing within

SMALL CAUSE COURT, MOFUSSIL —*continued*

3. PRACTICE AND PROCEDURE—*continued*

Act XI of 1865 s 23 An application for a new trial is a point in the proceedings previous to the hearing ISAN CHANDRA SING v HARAN SIRDAR
[3 B L R A C, 135 11 W R, 525

337 ———— *Act XI of 1865* —A point arising upon the application for a new trial may be referred to the High Court NOBO COOMAR CHUCKERBUTTY v KOYLASH CHUNDER BAROOREE 17 W R, 518

338 ———— **Change of Judges pending reference**—*Second reference by successor of Judge in case already decided* —Where a case was deter

up

the case was at an end and that it was irregular for a Judge who had succeeded to the Judge who referred the case to interfere in the matter UMANUND ROY v BROWNE 7 W R, 352

(*d*) MISCELLANEOUS CASES

339 ———— **Act XI of 1865, s 45 and s 20**—*Power of clerk of Small Cause Court* —A clerk of Small Cause Court is not authorized to sign the copy of the judgment and certificate alluded to in s 20 Act XI of 1865 ANONYMOUS
[3 W R, S C C Ref, 7

340 ———— s 51—*Powers of local Legislature—Judges of Small Cause Courts* —*Held* that in permanently investing, under s 51 of Act XI of 1865 the Judges of the Courts of Small Causes at Agra Allahabad and Benares with the powers of a Principal Sudder Ameen (Subordinate Judge) the Local Government did not exceed its power or contravene the law although the occasional investiture of Small Cause Court Judges by name from time to time with the powers of a Principal Sudder Ameen may have been the mode of procedure contemplated by the Legislature as the one likely to be ordinarily adopted *Bijee Kooer* v *Damodur Doss* 5 *N W* 55 impugned CROSTHWAITE v HAMILTON
[I L R, 1 All, 87

341 ———— *Execution of decrees of Small Cause Courts against immoveable property—Powers of Judge of Small Cause Court* —The Judge of a Court of Small Causes who has been duly invested with the powers of a Subordinate Judge under the provisions of s 51 of Act XI of 1865 has general jurisdiction within the meaning of s 20 of that Act and can consequently under the provisions of that section enforce a decree under that Act against the immoveable property of the judgment debtor GOPAL v NANKU
[I L R, 1 All, 624

342 ———— *Power to invest Small Cause Court Judge with powers of Principal*

SMALL CAUSE COURT, MOFUSSIL —*concluded*

3 PRACTICE AND PROCEDURE—*concluded*

Sudder Ameen —S 51 Act XI of 1865 did not authorize the Local Government to permanently and unconditionally invest the Judge of a Small Cause Court with the powers of a Principal Sudder Ameen. The section only contemplated an occasional investment of the powers and one contingent on the state of the business of the Court BIJEE KOOER v DAMODUR DASS 5 N W, 55

the Government Resolution No 2133 of the 3rd of April 1878 investing the Judge of the Court of Small Causes Ahmedabad with powers under the said chapter to adjudicate in insolvency matters was *ultra vires* and invalid. LALLU GANESH v RANCHHOD KAHANDAS I L R, 2 Bom., 641

By the Civil Procedure Code Amending Act XII of 1879 s 360 is made applicable to Small Cause Courts so that such a resolution would now apparently be valid

344. ———— **Presentation of plaint**—*Former order returning plaint—Provincial Small Cause Courts Act (IX of 1887) ss 23 and 27* —

under s 23 of Act IX of 1887 —*Held* that the order returning the plaint being final under s 27 of the Act the Judge could not admit and register the plaint until that order had been set aside IN RE HAUSAMBHAI ABDULABHAI
[I L R, 20 Bom, 283

SMALL CAUSE COURT, PRESIDENCY TOWNS

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SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

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(i) MOVEABLE PROPERTY	8679
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See CLAIM TO ATTACHED PROPERTY.
[I. L. R., 18 Calc., 296
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4 C. W. N., 470

See HABEAS CORPUS, WRIT OF.
[I. L. R., 1 Calc., 78

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, 1882, s. 622.
[I. L. R., 13 Bom., 642

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See EXECUTION OF DECREE—TRANSFER OF DECREE FOR EXECUTION, ETC.
[I. L. R., 1 Bom., 82

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—— Calcutta.

See PLEADER — APOINTMENT AND APPEARANCE . . 1 B. L. R., A. C., 45
[2 Ind. Jur., N. S., 133 : 7 W. R., 228

—— Madras.

See HINDU LAW—CONTRACT—ASSIGNMENT OF CONTRACT . . 4 Mad., 176
[1 Mad., 150

—— Execution of decree of—

See BAILMENT . 5 B. L. R., Ap., 31

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[8 B. L. R., Ap., 10

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[14 B. L. R., 76

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[I. L. R., 21 Calc., 269
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[8 B. L. R., 418

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See EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS — SMALL CAUSE COURT, PROCEEDINGS IN.
[6 B. L. R., 729, 730 note
7 B. L. R., Ap., 61

1. JURISDICTION.

(a) GENERAL CASES.

1. —— Extension of jurisdiction by Act XV of 1882—*Act IX of 1850, s. 53—Abandonment of excess.*—Whilst the pecuniary jurisdiction of the Small Cause Court was limited to R1,000, the plaintiffs brought a suit for that amount for damages for breach of a certain contract after abandoning the excess, and in that suit they elected a non-suit under s. 53, Act IX of 1850. *Held,* in a suit brought in respect of the same damages for the full amount due to them, that the plaintiffs were not precluded, by their having abandoned the excess in the former suit, from recovering the full amount sued for. SIMSON *v.* GORA CHAND DOSS
[I. L. R., 9 Calc., 473

2. —— Adding sum to legal claim for purpose of giving jurisdiction—*Act IX of 1850, s. 28—Act XXVI of 1864, s. 2.*—A plaintiff cannot give jurisdiction to the Small Cause Court by adding to his claim sums which he could not, under any circumstances, be entitled to recover. *Sikhur Chund* v. *Sooringmull, 1 Hyde, 272,* distinguished. BONOMALLY NAWN *v.* CAMPBELL
[10 B. L. R., 193 : 19 W. R., 20

3. —— Abandonment of excess—*Claim not within pecuniary limits of jurisdiction.*—The Court has no jurisdiction to hear a case unless there be an abandonment of any excess above its pecuniary jurisdiction. GORACHUND CHUNDER BOSE *v.* CHARROO CHUNDER GHOSE
[Bourke, O. C., 3 : Cor., 93

4. —— Leave to sue — *Presidency Towns Small Cause Courts Act (XV of 1882), s. 18—Discretion, Exercise of—Refusal of leave to sue — Jurisdiction — Defendant residing outside jurisdiction.*—A tradesman in business in Calcutta sued his debtor, a resident at Lucknow, to recover a sum of R23 for goods sold in Calcutta and

forwarded by the E I Ry. Co, for delivery at Lucknow. The plaintiff applied under s 18 of Act XV of 1882 for leave to sue the defendant in the Calcutta Court of Small Causes The Court refused to grant such leave, apparently on the ground that the defendant was living at a long distance from Calcutta, and that the suit was one for a small amount *Held* that, in refusing to grant such leave the Judge of the Small Cause Court had not

COLLETT v ARMSTRONG . I. L R, 14 Calc, 526

5. ——— Non-resident foreigner carrying on business by his munim in Bombay—*Presidency Towns Small Cause Courts Act (XV of 1882), s 18*—Where a foreigner who did not reside in Bombay carried on business there by his munim,—*Held* that, under s 18 (1) of the Small Cause Courts Act (XV of 1882) the Small Cause Court in Bombay had jurisdiction to try a

over whom the clause gives jurisdiction if they are "resident" or "personally work for gain" within the territorial limits of the Small Cause Court, it would be a strained construction to hold that it did not include them among the defendants over whom the clause gives jurisdiction on the ground that they are "carrying on business" within the limits Although it is true that a non British subject who does not personally carry on business within the territorial limits of the Court does not make himself personally subject to the municipal law of British India, still, by establishing his business in British India from which business he expects to derive

the Courts of the country GIRDHAR DAMODAR v KASSIGAR HIRAGAR I L R., 17 Bom., 662

6. ——— Splitting claim—*Omission to abandon excess—Act IX of 1850, s 34*—*Held* under s. 34 of Act IX of 1850 that an abandonment of excess not stated in the summons is a splitting of the claim, and the Court has no jurisdiction to amend its record where there is no abandonment so stated GOBACHUND CHUNDER BOSE v CHARROO CHUNDER GHOSE Bourke, O. C, 3: Cor, 93

defendant Some of these native firms, in respect of such transactions, became indebted to the plaintiffs, and the defendant wrote to the plaintiffs requesting them to sue such defaulting firms The

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

in one of the suits, amounting to R433 *Held* that the plaintiffs, in doing so, were splitting their cause of action within the meaning of s 34 of the Small Cause Courts Act (IX of 1850) BLACKWELL & Co. v SUMAR AHMED 6 Bom., O. C, 88

See CHOCKALINGA PILLAI v. VIRUTHALAM [4 Mad., 334

8 ——— *Act IX of 1850, s. 34—Tradesman's account*—A tradesman cannot,

KER LILADHUR KISSOWJI I. L R, 2 Bom, 570

tion, notwithstanding that the original contract was for more than R1,000 KUPPU CHETTI v CHIDAMBARA MUDALI . 3 Mad., 170

10. ——— *Act IX of 1850, s 27—Liquidated damages—Earnest money*—Where a contract for the sale and delivery of 2 000 bars of stone contained a provision that in case of breach by the purchaser a sum as liquidated damages

money and sue for the whole amount of the liquidated damages, but that his proper course was to sue for the difference only, which suit could properly be brought in the Small Cause Court, being R1 000 only MEHERVANJI MANCHARJI v PUNJA VELJI . 5 Bom, O. C., 147

11 ——— *Set off—Deduction of amount of proceeds of goods not accepted*—The plaintiffs consigned goods to the defendant, and drew a bill for R2,711 9 6 against them on the defendant in favour of the Chartered Mercantile Bank. The bill was accepted by the defendant, and, when presented for payment, was dishonoured The bill was paid for honour by the attorney of the plaintiffs. The goods arrived, and (the defendant having refused to pay the bill) were sold by the plaintiffs, after notice to the defendant at his risk, and realized R1,655 15 4. The plaintiff refused to hold a survey on the goods unless the defendant paid the amount of the acceptance. The plaintiffs

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

sued the defendant in the Small Cause Court for the amount of his acceptance, giving him credit for the proceeds of the goods, and abandoning the excess. *Held* that the plaintiffs were not entitled to do so, as the claim on the bill was not brought within the jurisdiction of that Court by payment or admitted set-off. SHORTT *v.* ABDUL RAHIMAN

[6 Bom., O. C., 53

12. ——————— *Part payment—Set-off—Suit for balance of account.*—The plaintiffs advanced R15,000 against the defendant's grain consigned to Hong-Kong, to be there sold on his account by the plaintiffs' agents. The plaintiffs subsequently gave credit to the defendant for R14,115-3-3, alleged to have been received by them as the proceeds of the sale, and sued him for the balance in the Bombay Small Cause Court, abandoning the excess so as to bring the claim within the Court's extended jurisdiction of R1,000. The defendant disputed the correctness of the account sales forwarded by the agents at Hong-Kong, and contended that the Court had no jurisdiction to try the case. The Judge, subject to the opinion of the High Court upon the facts as stated, struck the case out of the list for want of jurisdiction. *Held* that, as both the plaintiffs and the defendant were bound, by the nature of the transaction, to have the proceeds of the sale applied to satisfy the advance made by the plaintiffs to the defendant, the receipt by the plaintiffs of the amount, for which they gave credit in their particulars of demand, was in the nature of a part payment; and that the suit was therefore on a balance of account, and within the jurisdiction of the Court of Small Causes. EWART, LATHAM & CO. *v.* MUHAMMAD SIDDIK . . . . . 4 Bom., O. C., 133

(*b*) ARMY ACT.

13. ——————— **Stat. 44 & 45 Vict., c. 58, ss. 148, 151**—*Act XV of 1882, s. 18—Leave to sue.*—The jurisdiction given to Small Cause Courts by Act XV of 1882 is not affected by 44 & 45 Vict., c. 58, s. 151. WALLIS *v.* TAYLOR

[I. L. R., 13 Calc., 37

14. ——————— *Presidency Towns Small Cause Courts Act (XV of 1882)—Army Act, 1881 (44 & 45 Vict., c. 58), s. 151—Army (Annual) Act, 1888 (51 Vict., c. 4), s. 7—Leave to sue.*—The jurisdiction given to Presidency Small Cause Courts by Act XV of 1882, s. 18, is not affected by 51 Vict., c. 4, s. 7. WATTS & CO. *v.* BLACKETT . . . I. L. R., 18 Calc., 144

15. ——————— *Presidency Towns Small Cause Courts Act (XV of 1882), cl. 2, ss. 1, 18—Army Act, 44 & 45 Vict., c. 58, sub-s. 1, s. 151—51 Vict., c. 4, s. 7.*—The words of s. 7 of 51 Vict., c. 4, amending sub-s. 1 of s. 151 of 44 & 45 Vict., c. 58, are meant to restrict the words "within the jurisdiction, etc." (found in sub-s. 1 of s. 151) to persons resident within it, so as to meet and exclude the case of persons casually within the jurisdiction and not actually resident within it, and are limited to that purpose, and do not therefore affect the powers conferred by s. 18 of Act XV of 1882. WALLIS & CO. *v.* BAILEY

[I. L. R., 18 Calc., 372

(*c*) DAMAGES FOR BREACH OF CONTRACT.

16. ——————— **Contract for shipment and delivery of goods**—*Divisible contracts—Construction of contract—Separate suits.*—Where a contract provided for delivery of goods in two monthly shipments and the defendants refused to take delivery or pay for either of the shipments of the goods in accordance therewith; and it appeared that the total amount of the damages sustained by reason of the two breaches alleged, if added together, exceeded R2,000, whereas, if taken separately, they were less than that amount,—*Held* that on the true construction of the contract the plaintiff was entitled to bring two separate suits for the damages sustained in respect of each shipment, and that therefore the Presidency Small Cause Court had jurisdiction. VOLKART *v.* SABJU SAHEB

[I. L. R., 19 Mad., 304

(*d*) DECREE, SUIT ON.

17. ——————— **Suit on decree of Small Cause Court**—*Presidency Small Cause Courts Act, XV of 1882, ss. 1, 4, 94.*—A judgment-creditor in the Court of Small Causes had not before the 1st July 1882 the right to sue in that Court on his judgment. MERWANJI NOWROJI *v.* ASHABAI

[I. L. R., 8 Bom., 1

(*e*) IMMOVEABLE PROPERTY.

18. ——————— **Question of title**—*Act IX of 1850, s. 91 (Act XV of 1882, s. 41)—Summons to show cause on what title occupier holds, without leave of owner.*—Upon a summons issued under section 91 of Act IX of 1850 by the Judge of the Small Cause Court to the occupier of a house to show by what title he claims to hold or occupy the same or part thereof,—*Held* that the jurisdiction of the Small Cause Court was not ousted by the occupier appearing and showing as cause that which did not amount to an allegation of title in the occupier. *Held* also that the words in that section, "without leave of the owner," comprised a case where the original possession was with leave of the owner, but was afterwards withdrawn by his vendee, the subsequent owner. DADABHAI HUSSANJI *v.* KUVARBAI . . . . . . 10 Bom., 386

19. ——————— *Act IX of 1850, ss. 91-93—Difficult or doubtful question of title.*—Proof of the existence of a difficult or doubtful question as to the right to possession, *bonâ fide* raised by the person in possession, was held to be sufficient cause shown to justify a Presidency Small Cause Court in refusing a warrant of ejectment under-

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*continued.*

s. 93 of Act IX of 1850 MUHAMMED ESUF SAHIB v. GEORGE . I L. R, 4 Mad, 385

Mere assertion of a title to possession is not sufficient MUHAMMED ESUF SAHIB v GEORGE [I. L R, 4 Mad, 385

ANONYMOUS I L. R, 4 Mad, 389 note

20 ———— *Title to immoveable property—Act IX of 1850, ss 25, 91—Act XXVI of 1864, s 2—Practice—Leave to amend summons and plaint*—In a suit brought under s 91 of Act IX of 1850, the Bombay Court of Small Causes had no jurisdiction to try a question of adverse title to the immoveable property, the subject of the suit *Aliter*—if the suit were brought under s. 25 of Act IX of 1850, as extended by s 2 of Act XXVI of 1864, and the value of the property in dispute did not exceed R1 000 In a case involving a question of adverse title, the plaintiff should be allowed to amend the summons issued under s 91 of Act IX of 1850, so as to render it conformable with a claim under s 25 of Act XXVI of 1864 if the summons were issued in the mistaken form by the fault of the Clerk of the Court and not of the plaintiff NOWLA OOMA v. BALA DHURMAJI [I. L. R, 2 Bom, 91

21 ———— *Act IX of 1850*

to deliver up possession of certain premises in his occupation belonging to the plaintiff The plaintiff alleged that he had purchased the premises in question in 18 0 from one *N*, to whom the defendant

f sale
to *N*
ted on
from

the defendant, and never had manual possession of the premises occupied by him. But the plaintiff produced a writing of attornment, dated April 1873, passed to him by the defendant, whereby the latter acknowledged that he was occupying the premises in question as the plaintiff's tenant, and agreed to pay rent for the same at R25 a month His defence was that the mortgage, the sale, and the writing of attornment were all merely colourable, executed for the purpose of defeating his creditors and screening the property from execution; that no money had passed between the parties, that the de-

dant proposed to prove the above facts, and submitted that, under the circumstances, a *bonâ fide* question of title was raised which ousted the jurisdiction conferred on the Court by s 91 The Court, however, refused to receive the evidence, and held that it had jurisdiction On reference to the High Court,—*Held* that the defendant was entitled to set up the defence which he had, and that it ousted the jurisdiction of the Court of Small Causes to proceed further with the action—inasmuch as such defence raised a question of adverse title which, in suits under s 91 of Act IX, 1850, that Court had not jurisdiction to decide. LUCKMIDAS KHIMJI v MULJI CANJI . . I. L. R., 5 Bom, 295

22 ———— *Act XV of 1882, s 41—Landlord and tenant—Admission of tenancy*

s 41 of the Small Cause Courts Act, XV of 1882 The defendant admitted the tenancy, but contended that he held under an unexpired lease for four years The Judge of the Court of Small Causes was of opinion that a question of title was involved, and he dismissed the case on the ground that he had no jurisdiction to hear it The plaintiff thereupon applied to the High Court under its extraordinary jurisdiction *Held* that the case was within the jurisdiction of the Small Cause Court DAVIDAS HARJIVANDAS v TYABALLY ABDULALLY [I L R., 10 Bom, 30

23. ———— *Presidency Towns Small Cause Courts Act (XV of 1882), ss 22 and 41—Landlord and tenant—Suit to eject tenant*

terest, and costs The plaintiff, nevertheless, filed this suit to eject the defendants The defendants subsequently paid the full amount due into Courts *Held* that, under the terms of the lease, the defendants were not liable to forfeiture, and that, since the suit should have been brought under Ch VII, s 41, of the Presidency Small Cause Courts Act the plaintiff must pay the defendants' costs as between attorney and client under s 22 of that Act *Held* on appeal (1) that there, having been a tender and payment into Court of the full amount due, the plaintiff proceeded with the suit at his risk under s 114 of the Transfer of Property Act, (2) that the suit not being cognizable by the Small Cause Court, s 22 of Act XV of 1882 did not apply, an application under Ch VII of that Act not being a suit under s 22 thereof KRISHNASAMI CHETTI v NATAL EMIGRATION BOARD I. L R, 17 Mad, 216

24 ———— **Trespass to immoveable property**—*Act XV of 1882, ss. 18, 19, 38, 45*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession, the defendant contended that such a suit was one for the determination of a *right to*, or *interest in*, immoveable property, and was therefore not maintainable in the Small Cause Court. *Held* the Court had jurisdiction to

1. JURISDICTION—*continued.*

entertain such a suit. PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY
[I. L. R., 11 Calc., 281

(*f*) INSOLVENCY.

25. ———— **Madras Small Cause Court** —*Civil Procedure Code (Act XIV of 1882), ss. 8-3 —Presidency Small Cause Courts, Act (XV of 1882), ss. 2, 23.*—The Madras Court of Small Causes has no jurisdiction in insolvency. The second paragraph of s. 8 of the Code of Civil Procedure, 1882, which authorized the Local Government, by notification published in the official Gazette, to extend to the Presidency Small Cause Court certain portions of the said Code, is repealed by the Presidency Small Cause Courts Act (s. 2 of Act XV of 1882), and consequently the notification of the Governor in Council of Fort St. George, dated 25th February 1879, conferring on the Madras Court of Small Causes jurisdiction in insolvency being repugnant to s. 8 of the Code of Civil Procedure, 1882, as amended, if otherwise valid, ceased to have effect when Act XV of 1862 came into force. IN RE WALLER
[I. L. R., 6 Mad., 430

(*g*) LEGACY, SUIT FOR.

26. ———— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 19—Suit for legacy—Equitable jurisdiction.*—A suit to recover a legacy brought in the Small Cause Court in which there is no allegation that the executors were in possession of sufficient assets to pay the legacy or that they had ever assented to the payment of the legacy is one for the administration of an estate and for an account: such a suit the Small Cause Court has no jurisdiction to try. OKHOY COOMAR BONNERJEE *v.* KOYLASH CHUNDER GHOSAL
[I. L. R., 17 Calc., 387

(*h*) MAINTENANCE, SUIT FOR.

27. ———— **Presidency Small Cause Courts Act (XV of 1882), s. 18.**—Presidency Small Cause Courts, constituted under Act XV of 1882, are not debarred from entertaining suits for maintenance not based on contract or declaratory decree. POKALA *v.* MURUGAPPA
[I. L. R., 10 Mad., 114

(*i*) MOVEABLE PROPERTY.

28. ———— **Tiled huts**—*Act IX of 1850, ss. 58, 88—Goods and chattels.*—Tiled huts were not "goods and chattels" within the meaning of s. 58, Act IX of 1850, and therefore cou'd not be taken in execution under that section. Where tiled huts had been seized under a decree of the Small Cause Court, and a third party interpleaded under s. 88 of Act IX of 1850 and claimed the huts,—*Held* that the Court, having no power to seize the huts, was right in dismissing the claim. KALLYPERSAUD SINGH *v.* HOOLAS CHUND . 10 B. L. R., 448 : 20 W. R., 8

29. ———— **Fixtures**—*Act IX of 1850, s. 85—Seizure of goods and chattels in execution of decree—Engine in flour-mill—Landlord and tenant.* —In a suit for damages for the removal of oil and flour mills and a steam-engine and boiler seized in execution of a decree of the Calcutta Small Cause Court,—*Held* that such things were fixtures, and not goods and chattels, within the meaning of s. 58 of Act IX of 1850, and therefore could not be seized in execution. The question whether fixtures are removeable by a tenant as against his landlord has nothing to do with the question whether they are seizable in execution as goods and chattels. MILLER *v.* BRINDABUN . I. L. R., 4 Calc., 946: 4 C. L. R., 460

30. ———— **Presidency Towns Small Cause Courts Act (XV of 1882), s. 28**—*Presidency Small Cause Court Rules of Practice, 49, 50, 51—Tiled huts—"For the purposes of execution," Meaning of—Question of Title—Res judicata.*—In execution of a decree of the Calcutta Small Cause Court against *N*, the judgment-creditors attached certain tiled huts which had been mortgaged by *N* to the plaintiff. Plaintiff thereupon filed his claim on the mortgage in the Small Cause Court, but his claim was disallowed, that Court being of opinion that the mortgage was a collusive transaction and not genuine. The plaintiff then brought this suit on his mortgage making the judgment-creditors as well as *N* defendants, and praying as against the judgment-creditors that they be restrained from proceeding to a sale or other disposition of the mortgaged premises. A preliminary objection was taken that such a suit would not lie, and the suit was dismissed on that objection by the original Court. *Held* that the words of s. 28 (Act XV of 1882), "for the purposes of execution," must mean for all purposes of execution, inclusive of the purposes of determining objections made to attachment. Tiled huts for all the purposes of execution are therefore moveable property under that section. The Small Cause Court has full power and authority to determine the question of title under a mortgage over attached property, and that question is therefore *res judicata.* DENO NATH BATABYAL *v.* NUFFER CHUNDER NUNDY
[I. L. R., 26 Calc., 778
3 C. W. N., 590

Held on appeal by the plaintiff reversing the above decision that tiled huts are immoveable property. That the words "for the purpose of the execution of the decree" in s. 28 of the Presidency Small Cause Courts Act (XV of 1882) only mean that, as between the judgment-debtor and the judgment-creditor, property of this particular class (*i.e.*, tiled huts) shall, for the purposes of execution, be deemed to be moveable. That section does not contemplate that Small Cause Courts should deal, in execution proceedings, with questions of title to or determine any right to or interest in tiled huts, at any rate as between the attaching creditor and the mortgagee of the judgment-debtor. *Ismail Solomon Bhamji* v. *Mahomed Khan, I. L. R., 18 Calc., 296,* distinguished. That the Small

the matter. DENO NATH BATABYAL *v* ADHOR CHUNDER SETT . 4 C. W. N., 470

(*j*) REGISTRATION ACT, 1866, ss 52, 53

31. ——— Petition and decree under Registration Act—Small Cause Courts in the Presidency Towns had no jurisdiction to entertain petitions and make decrees under the provisions of ss. 52 and 53, Act XX of 1866 IN THE MATTER OF ACT XX OF 1866 IN THE MATTER OF NIL KAMAL BANERJEE *v*. MADHUSUDAN CHOWDRY [6 B. L. R., 177

S C NIL COMUL BANERJEE *v* MUDOOSOODUN CHOWDHRY . . . 14 W. R., 478

(*k*) REVENUE

32 ——— Matter concerning revenue —*Trespass by Collector—Action of Collector in*

of the Collector was not "a matter concerning revenue" within the meaning of s 25 of Act IX of 1850, and that the jurisdiction of the Small Cause Court was therefore not excluded NARAYAN KRISHNA LAUD *v* NORMAN . 5 Bom., O. C., 1

(*l*) SET OFF.

33. ——— Claims arising out of the same transaction—*Presidency Small Cause*

breach of contract, and claimed judgment for the sum

to obtain credit for or receive the entire sum of R2 738 4, the Small Cause Court was without jurisdiction, and no set off could therefore be allowed. An

defendant for any balance which might be found due to him BROJENDRA NATH DAS *v* BUDGE BUDGE JUTE MILL CO. . I. L. R., 20 Calc., 527

34. ——— "Admitted set off"—*Presidency Towns Small Cause Courts Act (XV of*

them to the defendant on account of an entirely differe[illegible] [illegible]r claim to R1[illegible] [illegible]hat the R500 [illegible] did not, either before suit or at the trial, agree to its being set off against the plaintiffs' claim *Held* by MACPHERSON and TREVELYAN, *JJ* (PETHERAM, *C.J*, dissenting), that the sum of R500 could not, under *expl. I of s. 18 of Act XV of 1882*, be set off, and that the suit must be dismissed as being beyond the jurisdiction of the Court RAMDEO *v*. POKHIRAM . I. L. R., 21 Calc., 419

(*m*) TITLE, QUESTION OF

35. ——— Questions of title incidentally raised—*Act XV of 1882, s 19, cl. (g)—Suit for rent—"Suits for determination of any*

refers to suits brought expressly for the purpose of obtaining a decree determining a right or interest in immoveable property, and cannot include a suit brought for moveable property, or money, in which a question of title may be raised by the defendant The plaintiffs sued in the Presidency Court of Small Causes to recover fazendari *rent from the holder of* fazendari land. The defendant pleaded that no rent had been paid for the land since 1846, that the claim was time-barred, and that the plaintiffs had no title to the land in question The Judges of the Court of Small Causes dismissed the suit, on the ground that the defence raised a *bonâ fide* question of title to immoveable property which ousted their jurisdiction *Held*, reversing the lower Court's decision, that the suit was cognizable by the Court of Small Causes BAPUJI RAGHUNATH *v* KUVARJI EDULJI UMBIGAR . I. L. R., 15 Bom., 400

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

1. JURISDICTION—*concluded.*

(*n*) Trover.

36. ———— **Action for detinue and trover**—*Gift—Incomplete gift—Suit by executor to recover promissory notes on ground that the gift of them to defendant was incomplete—Presidency Towns Small Cause Courts Act (XV of 1882), s. 18.*—The plaintiff as executor of *D* sued the defendant in the Small Cause Court of Bombay to recover two Government promissory notes of the nominal value of R2,000, standing in the name of *D*. The defendant, who had been *D*'s servant, alleged that the notes had been given to him by *D* as a reward for past services. The Court held that there was evidence (though unsatisfactory) of a gift by *D* to the defendant. It was then contended, on behalf of the plaintiff, that assuming there was evidence of a gift, such gift was incomplete, inasmuch as the notes had not been endorsed to the defendant, and that the defendant was not entitled to any aid from the Court to perfect the gift. The Judge held that the Court of Small Causes had no power to decree the return of the notes or payment of their value, and that, so far as the jurisdiction of that Court was concerned, the defendant had a right to retain the note. *Held* by the High Court that the Court of Small Causes had jurisdiction to entertain the plaintiff's claim, on the ground that there was an incomplete gift of the notes to the defendant, and that it might on that ground pass a decree in favour of the plaintiff for the return of the notes or payment of the value. Khursedji Rustomji Colah *v.* Pestonji Cowasji Bucha

[I. L. R., 12 Bom., 573

2. PRACTICE AND PROCEDURE:

(*a*) General Cases.

The practice and procedure of the Presidency Small Cause Courts is so different now from what it was under the former Acts IX of 1850 and XXVI of 1864 that most of the cases decided under those Acts have become useless as precedents. The procedure is now governed by Act XV of 1882 by which a great portion of the Civil Procedure Code has been extended to these Courts.

37. ———— **Dismissal of suit for want of jurisdiction**—*Costs—Form of decree.*—Where a plea to the jurisdiction of the Small Cause Courts established under Act IX of 1850 is successful, the judgment ought to be one dismissing the suit. But whatever the form, it should be stated that the suit abates or is dismissed "for want of jurisdiction." In such a case the Court has power to award costs to the defendant. Freck *v.* Harley

[I. L. R., 6 Calc., 418: 7 C. L. R., 237

38. ———— **Power to restore case struck off for default in appearance**—*Act IX of 1850, s. 42.*—A Court of Small Causes, constituted under Act IX of 1850, could, during the same day and at the same sitting of the Court, *ex-parte* restore

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

a cause once struck out under s. 42, though the order for striking off may have been duly recorded. In such a case it would be open to the defendant to apply to set aside such *ex-parte* order, and the sufficiency of the grounds of the application would be a question for the discretion of the Judge. Shib Chunder Mullick *v.* Kissen Dyal Opadhya

[I. L. R., 1 Calc., 476

(*b*) Leave to sue.

39. ———— **Practice as to granting leave to sue person out of jurisdiction**—*Power of High Court to make rules as to Small Cause Court—Stat. 24 & 25 Vict., c. 104, s. 15—Civil Procedure Code (1882), s. 652—Presidency Towns Small Cause Courts Act (XV of 1882), ss. 6, 18, cls. (a) and (c), 33.*—In 1885 the High Court made a rule under the Presidency Small Cause Courts Act, s. 33, whereby it was declared that the granting leave to sue a defendant out of the jurisdiction under s. 18, cls. (*a*) and (*c*), of that Act was a non-judicial or quasi-judicial act within the meaning of that section, and might be done by the Registrar of the Court of Small Causes, Madras. *Held* that the rule was *ultra vires* and void. Rajam Chetti *v.* Seshayya . . **I. L. R., 18 Mad., 236**

(*c*) New Trial.

40. ———— **Application for new trial**—*Fresh evidence—Affidavits.*—A party who applies for a rule for a new trial and obtains it on particular materials, ought not to be allowed to go into fresh evidence with a view to strengthen his case when the rule comes on for hearing. If on hearing both parties the Court thinks further inquiry necessary, it can, of course, make such inquiry in such manner as seems most fit to it. When new trials are moved for *on allegation of facts, it would be very convenient that* a practice should be introduced of requiring the facts to be stated by affidavit, and in like manner the answer to be supported by affidavit. Modhoosoodun Koondoo *v.* Madhubram Sewloll **15 W. R., 161**

41. ———— *Presidency Towns Small Cause Courts Act (XV of 1882) (amended by I of 1895), Ch. VI, ss. 69 and 70—Jurisdiction.*—Where the plaintiff requested the Chief Judge of the Presidency Small Cause Court to deliver his judgment contingent upon the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), but subsequently abandoned the exercise of such right before the question to be referred was formulated or a reference made,—*Held* that the plaintiff was not thereby deprived of his remedies under Ch. VI of the Act, and could still make an application for a new trial. *Held* also that the meaning of s. 70 is that, in failing to give security, the party shall be deemed to have submitted to the judgment as final and conclusive within the meaning of s. 37 of Act I of 1895; that is to say, the judgment becomes final and conclusive, save as

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued*

2 PRACTICE AND PROCEDURE—*continued*

provided by Ch VI of Act XV of 1882 *Held*, therefore that the Small Cause Court had jurisdiction to entertain the application by the plaintiff for a new trial PROTAP CHUNDER SEN v TUNSOOK DASS I L R, 23 Calc, 967

42 Ground for new trial—*Want of jurisdiction*—A new trial may be granted on the ground of want of jurisdiction in the Court though such ground was not formally raised or recorded at the original hearing CHUNDER CHURN DUTT v EDULJEE COWASJEE BIJNEE [I L R., 8 Calc., 678 11 C L R., 225

43. ———— *Question of evidence—Power to reverse decree*—Where the question is one of evidence, the judgment of the original Court can be reversed and new trial directed only when such judgment is manifestly against the weight of evidence *Sadasook Gambir Chand* v *Kannayya, I L R, 19 Mad, 96,* followed SASSOON v HURRY DAS BHUKUT [I L. R, 24 Calc, 455 1 C W N, 44

the Judges exercised the powers of an Appellate Court in setting aside the original decree, and exceeded the jurisdiction vested in them by s 38 of the Act such jurisdiction being a revisional jurisdiction only *Held* also that, where the question is one of evidence the judgment of the original Court could be reversed, and a new trial directed only when such judgment is manifestly against the weight of evidence *Sadasook Gambir Chand* v *Kannayya, I L R, 19 Mad, 96, followed* SASSOON v HURRY DAS BHUKUT I L R, 24 Calc, 455 [1 C. W N, 44

45 ———— Difference of opinion between Judges as to allowing new trial.—In a case of difference of opinion between two Judges upon the point as to whether there should be a new trial, no rule can be granted JARDINE SKINNER & Co v MONEY 14 W R, 312

46 ———— Application to set aside ex parte decree—*Presidency Small Cause Courts Act (XV of 1882) s 37—Ex parte decree*—S 37 of the Presidency Small Cause Courts Act (XV of 1882) does not apply to an *ex parte* decree An application to set aside an *ex parte* decree passed by a Presidency Court of Small Causes falls within the

terms of s 108 of the Code of Civil Procedure ROSHANLAL v LACHMI NARAYAN [I L R., 17 Bom, 507

Cause Court in a suit tried by him delivered judg

at the conclusion that the judgment proceeded on a misappreciation of the evidence and reversed the decree *Held* by COLLINS, C J and SHEPHARD,

conclusions SADASOOK GAMBIR CHAND v KANNAYYA I L R, 19 Mad, 96

48 ———— Powers of Full Bench—*Presidency Towns Small Cause Courts Act (XV of 1882), s 37—Presidency Towns Small Cause Courts Amendment Act (I of 1895) s 13—Appeal*—Act I of 189 s 13 does not empower the Full Bench of the Presidency Court of Small Causes to entertain appeals of questions of fact against the decree of one of the Judges of the Court SRINIVASA CHARLU v BALAJI RAU I L R, 21 Mad, 232

49 ———— Second new trial It is competent to the Judges of the Calcutta Small Cause Court to grant a second new trial of the same case PURSON CHUND GOLACHA v KAJOORAM [10 B L R, 355 19 W R, 203

50 ———— *Second applica*
Cause
1850,
Cause
more
than one application for a new trial There is nothing in s 37 of Act XV of 1882 prohibiting such a practice It is in accordance with the practice of Courts in England to allow such applications *Purson Chund Golacha* v *Kajooram 10 B L R, 355 19 W R, 203* followed SURRUT COOMARI DASSEE v RADHA MOHUN ROY I L R, 22 Calc, 784

(*d*) REFERENCE TO HIGH COURT

51 ———— Question of law—Only questions of law in suits can be referred MOHUN SING v KAREEM OONISSA BEGUM 8 Mad, 57

The point of law referred should be expressly stated JARDINE SKINNER & Co v MONEY [14 W. R, 312

52 ———— *Question of fact—Act XXVI of 1864 s 7—Act IX of 1850 s 55.*—The question whether or not cotton fabrics bordered

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2. PRACTICE AND PROCEDURE—*continued.*

with silk, or having a portion of silk otherwise used in their manufacture, are "silks in a manufactured or unmanufactured state wrought up or not wrought up with other materials," within the meaning of s. 10, Act XVIII of 1854, was a question of fact to be decided on the evidence, and not a question of law to be referred for the opinion of the High Court under Act IX of 1850, s. 55, and Act XXVI of 1864, s. 7. LAKHMIDAS HIRACHAND *v.* G. I. P. RAILWAY COMPANY . . . . . **4 Bom., O. C., 129**

53. ——— **Order rejecting application for new trial**—*Judgment contingent on opinion of High Court.*—The decision of a Small Cause Court rejecting an application for a new trial, but making such rejection contingent upon the opinion of the High Court, was not such a judgment as could be referred under s. 7, Act XXVI of 1864. HALL *v.* JOAKIM . . . . . **12 B. L. R., 34**

See also MACKINTOSH *v.* GILL **[12 B. L. R., 37: 20 W. R., 358**

54. ——— *Act XV of 1882, s. 69—Reference to High Court, Question for—New trial, Application for—Difference of opinion between Judges—Contingent judgment.*—An order rejecting an application for a new trial, subject to the decision of the High Court on certain point or points referred, is not a "contingent judgment" within the meaning of s. 69 of Act XV of 1882, nor can points of difference between the Judges at that stage form matter for reference. NUSSERWANJEE *v.* PURSOTUM DASS . . . **I. L. R., 4 Calc., 298**

Under the Acts of 1850 and 1864, the Judge in referring a point was bound to make his judgment contingent on the opinion of the High Court.

See DOSABHAI KAVASJI *v.* KHERBADJI HORMASJI **[7 Bom., O. C., 180**

But now under the Act of 1882, s. 69, he can either give judgment contingent on the opinion of the High Court or reserve his judgment.

55. ——— **Stating case on application for a new trial**—*Presidency Towns Small Cause Courts Act (XV of 1882), ss. 37, 38, and 69.*—When, upon an application to the Presidency Small Cause Court for a new trial, the Judges differ in their opinion as to any question of law, and the majority, without ordering a new trial, reverse the decree of the Judge who tried the suit, the Court is bound to state a case for the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act. SESHAMMAL *v.* MUNUSAMI MUDALI **[I. L. R., 20 Mad., 358**

56. ——— *Presidency Towns Small Cause Courts Act (XV of 1882), ss. 37, 69—Application to Full Bench for new trial.*—The Full Bench of a Presidency Court of Small Causes cannot state a case for the opinion of the High Court on the hearing of an application for a new trial made under Act XV of 1882, s. 37, such hearing not being the "hearing of a suit" within the meaning of s. 69 of that Act. OAKSHOTT *v.* BRITISH INDIA STEAM NAVIGATION COMPANY **[I. L. R., 15 Mad., 179**

57. ——— *Presidency Small Cause Courts Act (XV of 1882), s. 69—Case stated for opinions of High Court—Mode of stating case—Question of law or usage.*—In a suit brought in the Small Cause Court by the plaintiffs against the defendant for damages for breach of contract to deliver goods, the only dispute was as to the principle on which damages were to be assessed. The defendant paid into Court the sum of R779-10-0. At the close of the hearing, and before judgment was delivered, the plaintiffs' attorney informed the Chief Judge that he would require a case to be stated for the opinion of the High Court under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), unless the decree were in his favour. The Judge thereupon desired him to state the exact question of law he would wish to be referred, but he declared himself unable to do so until after judgment was delivered. He said he could not then say anything more than that he would require a case to be stated for the opinion of the High Court on any question of law that might arise in the case. The Chief Judge thereupon stated the facts to the High Court, and referred the following general question for its opinion: "Whether, on the facts above set forth, the plaintiffs are entitled to recover from the defendant any, and if so what, sum greater than R779-10-0 paid into Court by the defendant?" On the reference coming before the High Court, a preliminary objection was taken as to whether the reference was in proper form, no question of law or usage havi[ng] the force of law having been formulated for th[e] opinion of the Court. *Held* (FARRAN, J., doubting) that the reference should be sent back to be amende[d] by stating the precise question arising in the case. RALLI BROTHERS *v.* GOCULBHAI MULCHAND **[I. L. R., 15 Bom., 376**

58. ——— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 69—Duty of the Judge in stating a case for opinion of the High Court—Question of law—Condition precedent to referring case.*—Under s. 69 of the Presidency Small Cause Courts Act (XV of 1882), the existence of such a question of law or usage or construction as therein mentioned is a condition precedent to a reference to the High Court, and if no such question arises, the Small Cause Court has no authority to refer and the High Court no jurisdiction to deal with the reference. The duty of drawing up the case, where a reference is made, is imposed on the Court, and it is responsible for the form of the case. ISHWARDAS TRIBHOVANDAS *v.* KALIDAS BHAIDAS . . . **I. L. R., 20 Bom., 778**

59. ——— *Presidency Towns Small Cause Courts Act (XV of 1882), s. 69—Requisition for reference, Time for making.*—A party requiring a Judge of the Small Causes Court to make a reference to the High Court under

SMALL CAUSE COURT, PRESIDENCY TOWNS—*continued.*

2 PRACTICE AND PROCEDURE—*continued.*

s 64 of the Small Cause Courts Act (XV of 1882) must do so before the Judge has delivered his judgment BANK OF BENGAL v VYABHOY GANGJI

[I. L. R, 16 Bom., 618

60. ———— *Judgment contingent upon opinion of the High Court—Presidency Small Cause Courts Act (XV of 1882), s. 69*

could ... on the receipt of the copy of the judgment of the High Court, was bound to enter judgment for the defendants YULE & CO. v MAHOMED HOSSAIN I. L. R, 24 Calc, 129

61. ———— Defect in reference — *No question of law referred—Presidency Small Cause*

requires such reference A Small Cause Court making a reference under s 69 should state the question of law or usage having the force of law, or the construction of a document upon which the opinion of the High Court is sought *Quære*—Whether s 617 of the Code of Civil Procedure is to be read as incorporated with s 69 of the Presidency Small Cause Courts Act BENODE LALL ROY v. RIVER STEAM NAVIGATION COMPANY . 1 C. W. N., 143

62. ———— Deposit of security for costs —*Act XXVI of 1864, s 8*—A case should not be referred to High Court by a Judge of the Small Cause Court until security has been deposited in accordance with s 8, Act XXVI of 1864, by the party against whom the judgment has been given. If such party do not deposit the security "forthwith," he must be taken to submit to the judgment of the Small Cause Court Where, however, a case was sent up without security for costs being deposited, and *before the case was heard the plaintiffs tendered a sum*

be heard FORNARO v RAMNARAIN SOOKDEB

[14 B. L. R, 180: 23 W. R., 136

63. ———— *Act XXVI of 1864, s 8—Omission to deposit costs—Non appearance*—Where a case had been referred from the Small Cause Court, for the opinion of the High Court, at the deposit nor ap dants,

to an order that the plaintiffs should pay the costs *of reference and other expenses connected therewith* DISSENT v JUSTICES OF THE PEACE FOR THE TOWN OF CALCUTTA

[5 B L. R, Ap, 24: 20 W. R., 349 note

In a similar case, however, the reference was held not to be properly before the Court, and an application for costs by the defendant was refused RAJKUMAR PARAMANICK v STEWART 5 B L. R, Ap, 23

These cases were under the old procedure Under Act XV of 1882, if security is not deposited, the party against whom the contingent judgment has been given is to be taken to have submitted to it

64. ———— Case referred at request of

not appear in the High Court, the decision must be given against him, whether security has been given for the costs of the reference and the amount of the judgment or not, and he must pay the cost of the reference. WILLIAMSON v. ARAB ISMAIL KHAN

[11 B L. R, 415: 20 W. R, 349

costs of a reference to the High Court cannot be dealt with separately, but must be dealt with when awarding the cost of the suit They are, however, in the discretion of the Court, and need not necessarily follow the event of the suit NICOL v MATHOORA DASS DUMANI

[I. L. R., 15 Calc, 507

(e) RE HEARING

re hearing—Rule of High Court, No 208—Limitation Act, 1877, s 5—An application to the High Court for a re hearing under s 38 of the Presidency Small Cause Courts Act (XV of 1882) must be in writing. A decree was passed against the petitioner by the Court of Small Causes on the 9th December 1887 *On the 16th December Counsel on his behalf* was instructed to apply to the High Court under s 38 of Act XV of 1882 for re hearing of the suit. The Court was then engaged in re hearing appeals; but, in order to prevent the petitioner's application from being barred by limitation under the provisions of the section which requires the application to be made within eight days their Lordships, before rising, allowed the application to be then formally made, but adjourned the hearing to a subsequent day When the case came on, it appeared (1) that the petition had

not been signed and declared until the 17th December 1887, *i.e.*, the day after the application had been made in Court; (2) that the affidavit in support of the application, as required by s. 38, had not been filed until two days after the application in Court; and (3) that the Court-fees, which by s. 71 of Act XV of 1882 should be paid prior to the application, had not been paid until the 20th December 1887, *i.e.*, four days after the application. *Held* that the application for a re-hearing must be rejected. The application, although nominally made on the 16th December, was only provisionally received, and every objection to its reception which could have been taken on that day could be taken at the hearing. The subsequent compliance by the petitioner with the requirements of the Act could not place him in a better position than he occupied when the application was made. IN RE JAIKISSONDAS PURSHOTAMDAS

[I. L. R., 12 Bom., 408

67. ———— *Presidency Small Cause Courts Act, s. 38—Case in which order for re-hearing granted on ground that decision of Small Cause Court was against weight of evidence —Practice.*—On an application for a re-hearing by the High Court, under s. 38 of Act XV of 1882, of a suit already heard and decided by a Judge of the Small Cause Court,—*Held* by the High Court that, the evidence being of a very conflicting character and not such as to justify a distinct opinion that the Judge of the Small Cause Court was wrong in his decision, the application for a re-hearing should be refused. S. 38 of Act XV of 1882 does not authorize the High Court to grant an order for a re-hearing where that Court merely feels that the evidence is doubtful without forming any opinion as to whether the conclusion arrived at by the Small Cause Court is a wrong one. The section requires that there should be such an opinion before granting the order, and such opinion should be a distinct opinion, and not merely what is termed an inclination of opinion. HASSANBHOY VISRAM *v.* BRITISH INDIA STEAM NAVIGATION COMPANY . . . I. L. R., 12 Bom., 579

68. ———— *Presidency Towns Small Cause Courts Act (XV of 1882), ss. 38, 71—Stamp—Petition insufficiently stamped —Deficiency of stamp, Power to make good, after period of limitation allowed for presentation of application.*—On the 7th April, being the last day on which such application could be made under the provisions of s. 38 of the Presidency Small Cause Courts Act, an application was made to the High Court under that section for the re-hearing of a suit which had been dismissed by the Small Cause Court. The application was made by petition at the rising of the Court, and not being a regular motion day, the hearing of the matter was postponed till the 9th April. On that day, on the application being brought on, it appeared that the petition only bore a 7-rupee stamp instead of one of the much larger value required by s. 71 of the Act. It was contended on behalf of the petitioner that the deficiency could then be made up, and that he was entitled to have the application heard. *Held* that this could not be done. The eight days allowed by s. 38 expired on the 7th April, and had the application been then considered, it could not have been received, but must have been rejected, as s. 71 requires the proper fee to be paid before the application can be received. Although the consideration of the application was deferred to the 9th April, that made no difference, as the eight days had expired before the petition was in such a condition that it could be received. NORENDRANATH BOSE *v.* ABINASH CHUNDER ROY . . I. L. R., 18 Calc., 445

69. ———— *Miscarriage or failure of justice—Withdrawal before judgment of request to refer case for the opinion of the High Court.*—In a suit in the Court of Small Causes, in which questions of law and fact were raised, the plaintiffs at first asked the Judge to state a case for the opinion of the High Court under s. 69 of Act XV of 1882. The Judge was willing to do so, but the plaintiffs withdrew their request. The Judge thereupon delivered his judgment and dismissed the suit. The plaintiffs then applied to the High Court for a re-hearing under s. 38 of Act XV of 1882. It was contended that the Judge was wrong in his view of law as applicable to the facts. *Held* that, even if that were the case, there was no "miscarriage or failure of justice" within the meaning of s. 38, and that the plaintiffs were not entitled to re-hearing. VASSONJI TRICUMJI & CO. *v.* SOUTHERN MARATHA RAILWAY COMPANY . . I. L. R., 17 Bom., 14

70. ———— *Presidency Small Cause Courts Act (XV of 1882), s. 38—Dismissal for default—Remedy of plaintiff—Civil Procedure Code (1882), ss. 100, 102, 103—Appearance and non-appearance of parties—Appearance by counsel or pleader to obtain adjournment.*—S. 38 of the Presidency Small Cause Courts Act (XV of 1882) does not preclude a plaintiff whose suit has been dismissed for default from applying under s. 103 of the Civil Procedure Code (Act XIV of 1882) to have the order of dismissal set aside. There is no inconsistency between the two sections. A plaintiff whose suit has been dismissed for default has two separate remedies under different enactments. If he chooses to apply for a new trial under s. 38, he must do so within eight days. If he professes to apply for an order setting aside the dismissal under s. 103 of the Civil Procedure Code, he can do so within thirty days (Limitation Act XV of 1877, sch. II, art. 163). A suit and cross-suit between the same parties were on the board of a Judge of the Presidency Small Cause Court for hearing on the 23rd April 1898. On that day *A*, the counsel who was instructed for the defendants in the first suit and for the plaintiffs in the second, was unable to attend, and *B*, another counsel, held his brief and appeared on his behalf and applied for two months' adjournment of both suits. The munim of his clients was then in Court. *B* was unable to state what was the defence, if any, to the claim of the plaintiffs in the first suit. The adjournment was refused, and

SMALL CAUSE COURT, PRESIDENCY TOWNS—*concluded.*

2. PRACTICE AND PROCEDURE—*concluded.*

hearing of both suits. The Court ... granted a rule for a new trial, as *ex parte* decrees, granted a rule for a new trial, which was made absolute On appeal to the Full Court, the matter was referred to the High Court *Held* that under the circumstances the suits were to be
100
of
or

[I. L. R., 23 Bom, 414

SMALL CAUSE COURT, RANGOON.

1. ———— Establishment of—*Act XXI of 1863—Act XI of 1865—Local Government* — Act XXI of 1863, after establishing Recorder's Courts in British Burma, and fixing the limits of their jurisdiction, enacted by s 10 that, "save as in this Act provided, no Court orther than the Recorder's Court shall have or exercise any civil jurisdiction whatever within the limits for the time being fixed as aforesaid" Act XI of 1865, after declaring that the words "Local Government" should denote "the person authorized to administer the Executive Govern-

by the Local Government Act XI of 1865 did not repeal s 10 of Act XXI of 1863 By notification dated 1st September 1869 the Governor General appointed a Judge of the Small Cause Court at Rangoon, extended the provisions of Act III of 1864 to British Burma, and invested the Chief Commissioner of British Burma with the powers conferred on a Local Government by that Act By notification of 2nd October 1869 the Governor General in

of 1865, were intended to include a Chief Commissioner Ko Shoay Doon v. Shoay Gan

[6 B L R, 198: 14 W. R, 331

2. ———— Jurisdiction of—*Foreign ship —Suit by sailor for wages—Mofussil Small Cause*

SMALL CAUSE COURT, RANGOON—*concluded.*

suit Olner v. Lavezzo

[I. L. R., 10 Calc., 878

SMUGGLING

See Stolen Property—Offences relating to . . 18 W. R., Cr, 63
[19 W. R., Cr, 37

SNAKE-CHARMERS.

———— Death caused by—

See Murder
[3 B L R, A Cr, 25: 12 W. R, Cr, 7
I. L R., 5 Calc, 351: 4 C. L R., 580

SOLDIER

See Cantonments Act (III of 1880), s 14 I L. R., 3 All, 214

———— Residence of—

See Jurisdiction—Causes of Jurisdiction—Dwelling Carrying on Business, or Working for Gain
[I. L. R., 1 All., 51

See Small Cause Court, Mofussil—Jurisdiction—Military Men
[5 W R, S C. C. Ref, 21
6 Mad., 83

———— Army Act, 1881, s 144—*Sub-Conductor, Ordnance Department—Service of summons —Civil Procedure Code, s 468* —A Sub Conductor of Ordnance on the Madras Establishment of Her Majesty's Indian Military forces, holding a warrant from the Government of Madras is a soldier within the meaning of s 144 of the Army Act 1881 In a suit to recover R183 7 0, a summons having been sent by the Court to the Commissary of Ordnance to be served on the defendant, his subordinate, the Commissary of Ordnance returned the summons unserved and referred to s 144 of the Army Act, 1881, and his reason for such action *Held* that the Commissary of Ordnance was bound to serve the summons under s 468 of the Code of Civil Procedure, although the defendant might be entitled to the privilege given by s 144 of the Army Act, 1881 Abraham v Holmes

[I. L. R, 11 Mad., 475

SOLICITOR.

See Cases under Attorney.

See Cases under Attorney and Client.

See Privileged Communication.

——— **Duty of**—*Attorney and client.*—It is the duty of a solicitor who has once undertaken a cause to carry it to a conclusion. In re a Solicitor . . . . **4 B. L. R., P. C., 29**

This was an observation made in some remarks addressed by the Judicial Committee to a solicitor who, having obtained a final order in an appeal, had abstained from carrying that order to its proper termination. It was intimated subsequently that it was not intended to have any judicial authority, being only a personal admonition addressed to the solicitor and having reference to the peculiar circumstances of his case . . **4 B. L. R., P. C., 51**

——— **Lien of, for costs.**

See Costs—Costs out of Estate.
[I. L. R., 10 Bom., 248

SOLITARY CONFINEMENT.

See Sentence—Solitary Confinement.
[3 B. L. R., A. Cr., 49
I. L. R., 6 All., 83

SOMAJ.

——— *Breach of agreement to join*—

See Contract Act, s. 23—Illegal Contracts—Generally.
[2 B. L. R., S. N., 4

——— **Exclusion from**—

See Jurisdiction of Civil Court—Societies . . **3 B. L. R., A. C., 91**

SONTHAL PERGUNNAHS.

See Settlement Officer.
[6 C. L. R., 555

See Transfer of Criminal Case—General Cases . **I. L. R., 18 Calc., 247**

——— **Appeals in cases from**—

See Appeal—Regulations—Bengal Regulation III of 1872.
[6 C. L. R., 555

See Appeal in Criminal Cases—Acts—Act XXXVII of 1855 . **17 W. R., 11**
[I. L. R., 12 Calc., 536

See High Court, Jurisdiction of—Calcutta—Civil.
[I. L. R., 3 Calc., 298
I. L. R., 10 Calc., 761

——— **Trial of suit for land in**—

See Jurisdiction—Suits for Land—Property in different Districts.
[I. L. R., 4 Calc., 222

See Subordinate Judge, Jurisdiction of . . . . **5 C. L. R., 128**

SONTHAL PERGUNNAHS JUSTICE REGULATION (V OF 1893).

——— **s. 24.**

See Sonthal Pergunnahs Settlement Regulation, s. 6.
[I. L. R., 26 Calc., 238.

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872).

——— **ss. 3, 4**—*Act XXXVII of 1855, s. 2—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887)—Suit exceeding R1,000 in value—Officer invested with power of a Civil Court—"Court."*—The effect of s. 2 of Act XXXVII of 1855 and s. 3 of Regulation III of 1872 is to make the general and regulations, including the provisions of the Code of Civil Procedure, applicable in the Sonthal Pergunnahs to suits exceeding R1,000 in value without any qualifications, provided that such suits are tried in the Courts established under the Civil Courts Act (XII of 1887). An officer in the Sonthal Pergunnahs invested by Local Government with the powers of a Civil Court under s. 4 of Regulation III of 1872 is a Court established under Act XII of 1887 within the meaning of s. 3 of the Regulation. Dungaram Marwary v. Rajkishore Deo
[I. L. R., 18 Calc., 133.

1. ——— **s. 5**—*Jurisdiction of Civil Court—Settlement proceedings.*—During the time of the settlement in the Sonthal Pergunnahs, certain proceedings were instituted, with the permission of the settlement officer, by the plaintiff to get possession of certain land, and came before the Subordinate Judge, by whom they were treated as a regular suit. The decision was not pronounced until the settlement had been completed. *Held* that s. 5 of Regulation III of 1872 did not apply, and that, under the circumstances, the proceedings must be taken to have been regularly commenced, and that they might be completed as proceedings in the ordinary Civil Court. *Held*, further, that the proceedings were not necessarily irregular by reason of the fact that issues had not been framed under s. 5 of the Regulation. Sonamoni Dasi v. Lilanund Singh . . **11 C. L. R., 30.**

2. ——— *Appeal from settlement proceedings—Notification of the Lieutenant-Governor of the 7th May 1872—Act XXXVII of 1855, s. 2.*—The officers appointed under s. 2 of Act XXXVII of 1855, and not the settlement officers as such, are the persons empowered to try such suits as are referred to by Regulation III of 1872, s. 5, and to certify issues to the Civil Courts under that section. The notification of the Lieutenant-Governor, dated the 7th May 1872, being still in force, the settlement officers have no power to deal with such cases. Where a settlement officer referred certain issues to a Deputy Commissioner as a Civil Court under Regulation III of 1872, s. 5, to be dealt with by him, and he gave a decision thereon and certified the same to the settlement officer, and it appeared that the Deputy Commissioner had previously been invested with the powers of a settlement officer, and the proceedings were subsequently returned to him for the settlement record to be amended

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872) —*continued*

Commissioner had no jurisdiction to try the issues sent him or deal with the case, but that, inasmuch as he was vested with the powers of a settlement officer,

Held also that, treating the action of the Deputy Commissioner as that of a settlement officer, the High Court had no jurisdiction to hear the appeal. TARINI PERSHAD MISRA *v* MAHAMUD CHOWDHRY [I. L. R, 7 Calc, 376

S. C TARINI PROSAD MISSER *v.* HURRISH CHUNDER CHOWDHRY . . . 8 C. L R, 548

principal and interest due on a former debt, that such agreement is not void under s 24 of the Contract Act, and that the obligee may recover such sums of money as he is entitled in law to recover, notwithstanding that part of the consideration is compound interest SHAMA CHARAN MISSER *v* CHUNI LAL MARWARI . I. L. R, 26 Calc., 238

1. ——— ss 11, 25—*Suit regarding matter decided by Settlement Court—Settlement officer, Finding of—Jurisdiction of Civil Court—Right of suit—Suit to set aside settlement and for possession.*—Where a suit was brought to establish, by avoiding the instrument under which he held, that the defen-

can take effect on a suit in the third of the three classes only when it is both a "suit to contest the finding or record of the settlement officer," and

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872) —*continued.*

involves also the determination of "the rights of zamindars or other proprietors as between themselves." RAM CHURN SING *v.* DHATURI SING [I. L. R., 18 Calc, 146

2. ——— "*Proprietor," Meaning of—Suit for establishment of lakhiraj title and amendment of record-of rights—Jurisdiction of Civil Court—Onus of proof*—In proceedings for settlement of rent and record of rights under the Sonthal Pergunnahs Settlement Regulation (III of 1872), certain lands claimed by the plaintiffs as lakhiraj were ordered to be recorded as mal and assessed with rent, the Commissioner of the Division stating that the plaintiffs might, if they chose, bring a suit in the Civil Court. The defendant (zamindar) obtained an *ex-parte* decree for rent on the basis of the jummabandi prepared in the said proceedings In a suit brought to establish the plaintiffs' lakhiraj title and for an order directing the record of rights and jummabandi to be amended,—*Held* that a lakhirajdar is a "proprietor" within the meaning of s 25 of the Regulation, and ss. 11 and 25 did not bar the jurisdic-
Ram Charan
, *18 Calc, 146,*
he present case
ve their alleged
lakhiraj title RAMRANJAN CHUCKERBUTTY *v.* NANDA LAL LAIK . I. L. R., 22 Calc, 473

1. ——— ss. 24, 25—*Suit to set aside order of settlement officer—Non-publication of record of-rights*—Where, in December 1884, a suit was brought to set aside an order of the settlement officer under Regulation III of 1872, made in December 1875, after disposing of the plaintiff's objections to the defendant's title, and it was found that no record of rights had been published in accordance with s 24 of the Regulation,—*Held* the suit was not barred under s 25 as not having been brought within three years from the date of the order The final order referred to in that section must be one subsequent to or not preceding the publication of the record-of rights RAM NARAIN SINGH *v.* RAM RUNJUN CHUCKERBUTTY I. L. R., 13 Calc, 245

2. ——— *Suit to set aside order of settlement officer—Non-publication of record-of-*

he held them had ceased, the defendant pleaded that the tenure was dur mokurari, that the lands had been settled as such in June 1877, and that the suit was consequently barred by the special limitation provided

the record of rights had not been published by its being posted conspicuously in the village as required by s 24. On second appeal it was contended on

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872)—*concluded*.

behalf of the defendant that such publication was not essential, but that it was open to the settlement officer to publish the record in such manner as might be convenient. *Held* that posting the record conspicuously in the village is an essential part of the publication, and that the suit was not barred by limitation. It was further contended that the onus of proving the tenure to be dur-mokurari, which had been thrown on the defendant, had been wrongly so thrown on him, as the suit was substantially one to set aside a decree. *Held* that the onus of proving the validity and propriety of the settlement-proceedings upon which he relied had been properly thrown on the defendant. NADIAR CHAND SINGH *v.* CHUNDER SIKHUR SADHU . I. L. R., 15 Calc., 765

SOVEREIGN PRINCE.

——— Suit against—

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

See RES JUDICATA—COMPETENT COURT—GENERAL CASES [I. L. R., 15 Mad., 494

SPECIAL OR SECOND APPEAL.

	Col.
1. ORDERS SUBJECT OR NOT TO APPEAL	8701
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See CASES UNDER APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.

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SPECIAL OR SECOND APPEAL
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1. ORDERS SUBJECT OR NOT TO APPEAL

1. ——— Law applicable to special appeals—*Civil Procedure Code, 1877, ss 588 591* —Second appeals to the High Court must either come within Ch XLII or ss 588 and 591 of Act X of 1877 HIRDHAMUN JHA v JINGHOOR JHA
[I L R, 5 Calc., 711

2 ——— Order improperly adding plaintiffs to suit—*Civil Procedure Code, 1882, s 591*—An appeal lies, under s 591 of the Civil Procedure Code, from an order improperly adding a person as a plaintiff in a suit. GOOGLEE SAHOO v PREMLAL SAHOO I. L. R, 7 Calc, 148

3. ——— Order for attachment for contempt—*Civil Procedure Code, 1882, s 591* —

4. ——— Decision of Political Agent in a regular appeal—*Political Agent of Southern Maratha Country*—A special appeal lies from the decision of the Political Agent of the Southern Maratha Country passed in regular appeal NILOWA v FAKIRAPPA 6 Bom, A C, 75

5 ——— Decision of the District

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Act is not "an order as to a fine" within the meaning of s 365 of Act VIII of 1859 (with which s 588

7. ——— Order as to compensation for land—*Land Acquisition Act (X of 1870), ss. 15, 39* —*Dispute as to right to compensation*—Where a

the dispute was referred ATRI BAI v. ARNOPOORNA BAI
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SPECIAL OR SECOND APPEAL
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1. ORDERS SUBJECT OR NOT TO APPEAL
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the Civil Procedure Code This was not done *Held* that a second appeal would lie JOYNATH ROY v. LALL BAHADOOR SINGH
[I. L. R, 8 Calc, 126: 10 C. L R., 146

9 ——— Order as to execution of decree under R5 000, but with interest, etc,

The application was rejected by the Subordinate Judge on the ground that the Court had no jurisdiction under s 24 of Act XIV of 1869 On appeal, the District Judge made an order confirming the
The plaintiffs
Court *Held*
h Court from
the suit was
within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit The mere circumstance that the amount actually due by process of *accumulation exceeded R5,000 could not oust him* from the jurisdiction he hitherto had over the suit SHAMBAV PANDOJI v NILOJI RAMAJI
[I. L R., 10 Bom, 200

10 ——— Regular appeal heard ex-parte—A special appeal lies from a regular appeal heard *ex-parte* TARA CHAND GHOSE v ANAND CHANDRA CHOWDHRY
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PARAN CHUNDER GHOSE v. CHUKKUN LALL ROY
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11. ——— Appeal from ex parte decree—*Appeal improperly admitted*—Where a decree is passed *ex parte* in an original suit, the defendant has no right to a special appeal, even though his appeal has been entertained by the Civil Court CHIDAMBARA PILLAI v KAMAN
[1 Mad., 189

12. ——— Decree ex-parte.—A second appeal lies from an *ex parte* decree of a lower Appellate Court MARUTI v VITHU
[I. L. R., 16 Bom., 117

SONTHAL PERGUNNAHS SETTLEMENT REGULATION (III OF 1872)
—concluded.

behalf of the defendant that such publication was not essential, but that it was open to the settlement officer to publish the record in such manner as might be convenient. *Held* that posting the record conspicuously in the village is an essential part of the publication, and that the suit was not barred by limitation. It was further contended that the onus of proving the tenure to be dur-mokurari, which had been thrown on the defendant, had been wrongly so thrown on him, as the suit was substantially one to set aside a decree. *Held* that the onus of proving the validity and propriety of the settlement-proceedings upon which he relied had been properly thrown on the defendant. NADIAR CHAND SINGH *v.* CHUNDER SIKHUR SADHU . I. L. R., 15 Calc., 765

SOVEREIGN PRINCE.

——— Suit against—

See JURISDICTION OF CIVIL COURT—FOREIGN AND NATIVE RULERS.

See RES JUDICATA—COMPETENT COURT—GENERAL CASES [I. L. R., 15 Mad., 494

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See PRIVY COUNCIL, PRACTICE OF—QUESTIONS OF FACT. [I. L. R., 16 Calc., 753: L. R., 16 I. A., 125

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See REVIEW—ORDERS SUBJECT TO REVIEW. [10 B. L. R., 155, 156 note

SPECIAL OR SECOND APPEAL
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1. ORDERS SUBJECT OR NOT TO APPEAL

1. ——— Law applicable to special appeals—*Civil Procedure Code, 1877, ss 588, 591* —Second appeals to the High Court must either come within Ch XLII or ss 588 and 591 of Act X of 1877 HIRDHAMUN JHA v JINGHOOR JHA
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3 ——— Order for attachment for contempt—*Civil Procedure Code, 1882, s 591*—

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4. ——— Decision of Political Agent in a regular appeal—*Political Agent of Southern Maratha Country*—A special appeal lies from the decision of the Political Agent of the Southern Maratha Country passed in regular appeal NILOWA v. FAKIRAPPA . 6 Bom, A C, 75

5 ——— Decision of the District Court on appeal from the Talukhdari Settlement Officer.—A decision of the District Court on appeal from the Talukhdari Settlement Officer is subject to second appeal to the High Court JAMSANG DEVABHAI v GOVABHAI KIKABHAI
[I. L. R., 16 Bom, 408

6 ——— Order for penalty under Stamp Act—*Civil Procedure Code, 1877, s 588—Act VIII of 1859, s 365*—A decision of a Judge directing a penalty to be enforced under the Stamp Act is not "an order as to a fine" within the meaning of s 365 of Act VIII of 1859 (with which s 588 of Act X of 1877 corresponds) S 365 was not intended to apply to penalties under the Stamp Act, but only to fines which may be levied under the Code itself. SONAKA CHOWDRAIN v BHOOBUNJOY SHAHA
[I. L. R, 5 Calc, 311

7. ——— Order as to compensation for land—*Land Acquisition Act (X of 1870), ss. 15, 39*—*Dispute as to right to compensation*—Where a dispute as to the right of one of two claimants to certain compensation awarded under the provisions of

... no Court to which the dispute was referred ATRI BAI v. ARNOPOORNA BAI
[I. L. R., 9 Calc, 838: 12 C. L. R., 409

SPECIAL OR SECOND APPEAL
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1. ORDERS SUBJECT OR NOT TO APPEAL
—continued.

that a second appeal would lie JOYNATH ROY v. LALL BAHADOOR SINGH
[I. L. R., 8 Calc, 126: 10 C. L R., 146

interest subsequently exceeded R5,000 The plaintiffs applied in execution to recover the total amount The application was rejected by the Subordinate Judge on the ground that the Court had no jurisdiction under s 24 of Act XIV of 1869 On appeal, the District Judge made an order confirming the decision of the Subordinate Judge The plaintiffs filed a second appeal in the High Court *Held* that no second appeal lay to the High Court from such an order The subject-matter of the suit was within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit, in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit The mere circumstance that the amount actually due by process of accumulation exceeded R5,000 could not oust him from the jurisdiction he hitherto had over the suit SHAMRAV PANDOJI v NILOJI RAMAJI
[I. L. R, 10 Bom, 200

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[2 B L. R., A C, 110: 10 W. R., 450

RAMSHET BIN BACHASHET v BALKRISHNA BIN ABABHAT . . . 6 Bom, A. C., 161

PARAN CHUNDER GHOSE v. CHUKKUN LALL ROY
[20 W. R., 402

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

aside on the ground of material irregularity. GOPI KOERI v. GOPI LAL . I. L. R., 21 Calc., 799

37. ———— **Order made on application to set aside sale in execution where the auction-purchaser is a benamidar for judgment-debtor**—*Civil Procedure Code (1882), ss. 244 and 311—Bengal Tenancy Act, s. 173.*—Where the auction-purchaser is a benamidar for the judgment-debtor, in an application to set aside a sale under ss. 173 of the Bengal Tenancy Act and 311 of the Code of Civil Procedure, a second appeal lies to the High Court from the order made on the application, as the application is one under s. 244 of the Code. CHAND MONEE DASYA v. SANTO MONEE DASYA . . . I. L. R., 24 Calc., 707 [1 C. W. N., 534

38. ———— **Order made under s. 311 of Civil Procedure Code (1882) on application to set aside sale.**—No second appeal lies from an order made under s. 311 of the Civil Procedure Code. NARAYAN v. RASULKHAN [I. L. R., 23 Bom., 531

39. ———— **Order refusing to set aside a sale**—*Appeal from an order remanding a case—Code of Civil Procedure (1882), s. 588, cls. 16 and 28, and s. 562.*—Though orders under s. 562 of the Code of Civil Procedure are appealable under cl. 28 of s. 588, yet the provisions of the latter section are subject to its last paragraph, which says that orders passed under this section shall be final; and therefore no second appeal lies from an order passed under s. 588, cl. 16, notwithstanding that it is an order passed by the lower Appellate Court remanding the case under s. 562, inasmuch as the order was made in a case which was itself an appeal from an order allowed by s. 588 of the Code. MATHURA NATH GHOSE v. NOBIN CHANDRA KUNDU BISWAS [I. L. R., 24 Calc., 774 1 C. W. N., 674

40. ———— *Order refusing to set aside sale in execution of decree—Civil Procedure Code (1882), ss. 2 and 588.*—A judgment-debtor, whose property had been sold in execution of a decree and purchased by the decree-holder, applied that the sale be set aside on the ground that the person at whose instance execution had proceeded had been improperly brought on to the record. The application was rejected by the Court of first instance, and an appeal by the applicant was dismissed. *Held* that no second appeal lay to the High Court. DAIVANAYAGAM PILLAI v. RANGASAMI AYYAR [I. L. R., 19 Mad., 29

41. ———— *Civil Procedure Code (1882), ss. 244, 311, and 588—Decree—Fraud—Question relating to the execution of the decree between parties to the suit—Auction-purchaser a third party.*—An application was made by the judgment-debtor against the decree-holder and the auction-purchaser, who was a third party, to have a sale set aside, on the ground of irregularity in publishing or conducting the sale, as also on the ground of fraud. The Court of first instance rejected the application, and refused to set aside the sale. On appeal to the Subordinate Judge, he reversed the decision of the first Court. On a second appeal to the High Court by the auction-purchaser, an objection was taken that no second appeal lay at his instance. *Held* that, inasmuch as the application was under s. 244 of the Civil Procedure Code, a second appeal would lie. The question of a right to a second appeal does not turn upon who may happen to be the appellant, but upon whether or not the case is one within s. 244 of the Code. HIRA LAL GHOSE v. CHUNDRA KANTO GHOSE [I. L. R., 26 Calc., 539

See BHOBA MOHAN PAL v. NUNDA LAL DEY [I. L. R., 26 Calc., 324

and MOTI LAL CHAKRABUTTY v. RUSSICK CHANDRA BAIRAGI . . I. L. R., 26 Calc., 326 note

42. ———— *Civil Procedure Code, 1882, ss. 244, 311—Application to set aside sale on ground of fraud.*—Where a judgment-debtor applies to have an execution-sale set aside and alleges circumstances which, if found in his favour, would amount to fraud on the part of the decree-holder or auction-purchaser, the case comes under s. 244 of the Civil Procedure Code, and a second appeal lies therein. NEMAI CHAND KANJI v. DENO NATH KANJI [2 C. W. N., 691

43. ———— **Order of remand made under s. 562 of Civil Procedure Code**—*Order made in an appeal under s. 588 from an order for attachment under s. 485.*—*Held* that no appeal would lie from an order of remand made under s. 562 of the Code of Civil Procedure when such order was itself made in an appeal under s. 588 from an order under s. 485 of the Code. *Mathura Nath Ghose* v. *Nobin Chandra Kundu Biswas, I. L. R., 24 Calc., 774,* followed. JHANDYA LAL v. SARMAN LAL [I. L. R., 21 All., 291

44. ———— **Order passed by Appellate Court on appeal from order granting a review of judgment**—*Civil Procedure Code (Act XIV of 1882), ss. 624, 626, 629.*—No second appeal lies against an order passed under s. 629 of the Civil Procedure Code. An application was made by a plaintiff for review of a judgment dismissing his suit as against all the defendants, which application was granted. Against that order the defendants appealed, and the lower Appellate Court confirmed the lower Court's order, granting the review as against one of the defendants, but set it aside as against the other defendants. *Held* that no second appeal lay against such order. THAN SINGH v. CHUNDUN SINGH [I. L. R., 11 Calc., 296

See AUKHOY CHURN MOHUNT v. SHAMANT LOCHUN MOHUNT . . . I. L. R., 16 Calc., 788

and cases there cited.

SPECIAL OR SECOND APPEAL
—continued.

1 ORDERS SUBJECT OR NOT TO APPEAL
—continued

45 ———— Order on application to review—*Civil Procedure Code, 1882, s 629—Appeal from decree as amended—Practice* — A second

BHIVA NATHA . I. L. R, 13 Bom., 496

46 Order on appeal affirming

of the Civil Procedure Code ... ing an appeal under s. 629 from an order granting an application for review of judgment GOPAL DAS v. ALAF KHAN . . I. L. R, 11 All, 383

ing a review of judgment. KANTI CHUNDER MUKERJEE v SALIGRAM . I. L. R., 24 Calc, 319

IMAM BUX v. MAHOMED GOPE [I. L. R, 24 Calc, 319 note

of appeal to the High Court whether the order was strictly referable to s 160 of that Act or not IN RE GAJADHAR PRASAD NARAYAN SINGH [1 B. L. R, A. C, 187

S. C GUJADHUR PERSHAD NARAIN SINGH v JUGDEO NARAIN 10 W R, 233

49 ———— Order of a District Court

Court There is no provision in the Act for a second appeal in any case SABBA RAO v PALANIANDI PILLAI I. L. R, 17 Mad, 167

SPECIAL OR SECOND APPEAL
—continued.

1 ORDERS SUBJECT OR NOT TO APPEAL
—continued.

50. ———— Order on application for revival of suit—*Act LIII of 1860, s 2—Civil Procedure Code, 1859, s 378*—The Zillah Judge reversed a decree in the plaintiff's favour on the ground that the suit was barred by the period of

the 1st of August 1859 might be instituted within two years from that day, and by s 2 that suits or appeals dismissed on the ground that they had not been *commenced within the period prescribed by the* Act

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was final, but being for the revival of a suit under the provisions of the latter law, his order was the subject of an appeal. BUNGSHEEDHUR MUNDUL v PUDDOLOCHUN ROY [Marsh, 38 W. R., F B, 11 1 Ind Jur, O S, 5. 1 Hay, 90

I.

Court in suits similar to the one in question A second appeal to the High Court in that suit was filed on the 18th of November 1885 *Held* that no appeal lay HURROSUNDARI DABI v BROJOHARI DAS MANJI . I L. R, 13 Calc, 86

52. ———— Order in suit entertained without jurisdiction—*Subsequent Act passed*

An Act was subsequently passed declaring that all suits which had been similarly entertained without jurisdiction should be deemed to have been duly preferred The plaintiff, after the passing of the Act, filed a special appeal, in which he urged that the decision of the Court of first instance was no longer illegal, and that the suit should be heard by the lower Appellate Court on its merits *Held (per* TURNER *J)* that, as at the time the lower Appellate Court gave the decision from which the special appeal was presented the Act had not been passed, it must be held that its judgment was correct, and that a new law, passed since the decision, could not make that *decision wrong*, which was, and *still is*, with reference to the law then in force, right, and that

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

the appeal should be dismissed. *Held* (*per* SPANKIE, *J.*) that a special appeal would lie, the decision being contrary to a law in force at the time that the special appeal was instituted, which law the Court was bound to enforce. BULDEO *v.* LUCHMUN

[5 N. W., 106

53. ——— Order in execution of a decree.—Under Act VIII of 1859, there was no special appeal from orders passed in execution of a decree. ANONYMOUS . 1 Ind. Jur., O. S., 50

ANONYMOUS . . 1 Ind. Jur., O. S., 68

But there is now since the passing of Act XXIII of 1861.

See MAHOMED HOSSEIN *v.* AFZUL ALLY

[B. L. R., Sup. Vol., Ap., 1: Marsh., 296 W. R., F. B., 83: 2 Hay, 293

BAGUBAI *v.* NIZMUDDIN . 6 Bom., A. C., 205

VIRASAMY MUDALI *v.* MANOMMANY AMMAL. VENKATA BALAKRISHNA CHETTI *v.* VIJIARAGUNADHA VALAJI KRISHNA GOPALER . . 4 Mad., 32

54. ——— *Act XXIII of 1861, ss. 11 and 44—Act VIII of 1859, ss. 257, 269, and 372.*—A special appeal will lie from an order passed on appeal in relation to the execution of a decree. MAHOMED HOSSEIN *v.* AFZUL ALI

[B. L. R., Sup. Vol., Ap., 1: Marsh., 296 W. R., F. B., 83: 2 Hay, 293

55. ——— *Decree in suit on bond registered under s. 53, Act XX of 1866.*—No second appeal lay to the High Court against an order passed on an application for execution of a decree made in a suit under s. 53 of Act XX of 1866. *Quære*—Whether an appeal lay at all against such an order passed in proceedings taken in execution of such a decree. SRI BULLOV BHATTACHARJI *v.* BABURAM CHATTOPADHYA

[I. L. R., 11 Calc., 169

56. ——— *Civil Procedure Code, 1877, s. 244—Registration Act, 1866, s. 53.*—An application was made to a District Munsif on the 16th July 1877 to issue execution on a decree dated 6th November 1869, obtained on a bond registered under s. 53 of the Registration Act of 1866. He made an order refusing execution, the decree being one passed, not in a regular suit, but in a summary suit, and governed by the period of limitation prescribed by art. 166, sch. II, Act IX of 1871. On appeal the Subordinate Judge reversed the order of the Munsif, holding that art. 167, sch. II of Act IX of 1871, applied. On application to the High Court,—*Held* that, as s. 588 of Act X of 1877 provided that orders passed in appeal from orders under s. 244 should be final, no second appeal lay. SURYA PRASAKA RAU *v.* VAISYA SANNYASI RAZU . . I. L. R., 1 Mad., 401

57. ——— Appeal from portion of decree disallowing objection—*Civil Procedure Code, 1882, ss. 561, 584.*—A preliminary objection taken by a respondent that no second appeal lies from so much of the decree of a Subordinate Judge as disallowed objections filed by the appellant under s. 561 of the Code of Civil Procedure was held to be without weight. GANAPATI *v.* SITHARAMA

[I. L. R., 10 Mad., 292

58. ———Decision as to title to land—Appeal to High Court from decision of District Court on appeal—*Madras Forest Act, s. 10.*—An appeal lies to the High Court from a decision of a District Court passed under s. 10 of the Madras Forest Act, 1882, on appeal from the decision of a Forest Settlement Officer. KAMARAJU *v.* SECRETARY OF STATE FOR INDIA I. L. R., 11 Mad., 309

59. ——— Arbitration—*Civil Procedure Code, ss. 521, 522, and 582—Revocation of submission—Appellate decree in accordance with award.*—By reason of s. 582 of the Civil Procedure Code, where a Court of first instance wrongly sets aside an arbitration award and passes a decree against the terms thereof, and a Court of first appeal, holding that the award was not open to objection upon the grounds mentioned in s. 521, passes a decree strictly in accordance with the award, such appellate decree is entitled to the same finality as the first Court's decree would have been under the last paragraph of s. 522, and cannot be made the subject of second appeal. *Pureshnath Dey* v. *Nobin Chunder Dutt, 12 W. R., 93*, and *Rughoober Dyal* v. *Maina Koer, 12 C. L. R., 564*, dissented from. NAURANG SINGH *v.* SADAPAL SINGH . I. L. R., 10 All., 8

60. ——— Order reviewing and setting aside order rejecting objection to execution of decree—*Civil Procedure Code, s. 629.*—When a Munsif sets aside on review an order rejecting an objection to the execution of a certain decree, and the District Court on appeal refuse to interfere,—*Held* that no second appeal lay to the High Court. PAPAYYA *v.* CHELAMAYYA

[I. L. R., 12 Mad., 125

61. ——— Order of Special Judge as to settlement of rents—*Superintendence of High Court—Bengal Tenancy Act (VIII of 1885), ss. 104, cl. 2, 105, 106, 108—Rule 33 of the Rules made under the Act—Jurisdiction—Record-of-right—Civil Procedure Code (Act XIV of 1882), ss. 108, 622.*—The High Court has no jurisdiction either to entertain a second appeal from, or to interfere under s. 622 of the Code of Civil Procedure with, an order of a Special Judge in regard to settlement of rents. SHEWBARAT KOER *v.* NIRPAT ROY

[I. L. R., 16 Calc., 596

62. ——— *Decision of Settlement Officer—Settlement of rent under Bengal Tenancy Act (VIII of 1885), s. 104.*—No second appeal lies to the High Court from a decision of a Revenue officer settling rents under s. 104 of the

SPECIAL OR SECOND APPEAL
—continued.

1 ORDERS SUBJECT OR NOT TO APPEAL
—continued

Bengal Tenancy Act ACHHA MIAN CHOWDHRY v DURGA CHURN LAW I. L R., 25 Calc, 246 [2 C. W N, 137

63 ———— *Rent suit—Bengal*

VIII of 1885, although the judgment in the suit ...refrom heard, ... *Hurrosun-* ... *I. L. R, 13 Calc, 86,* approved SATGHURI v MUJIDAN [I. L. R, 15 Calc, 107

64.———— Appeal from order of District Judge—*Bengal Tenancy Act (VIII of 1885), s 153—Appeal in rent suits*—In certain rent suits,

appeal the District Judge held that the question was not *res judicata,* and remanded the suits for trial on the merits. The plaintiff preferred a second appeal

payable to any particular co-sharer in the property PRASANNA KUMAR BANERJEE v SRINATH DAS [I. L R, 15 Calc, 231

65. ———— Appeal in cases under R100—*Bengal Tenancy Act (VIII of 1885), s 153—Cesses, Suit for—Bengal Act IX of 1880, s 47*—A suit to recover cesses for an amount not exceeding R100 falls under the provisions of s 153 of Act VIII of 1885 with respect to appeals MOHESH CHUNDER CHUTTOPADHYA v UMATARA DEBY . I. L. R., 16 Calc, 638

66. ———— Order of Special Judge on appeal from settlement officer—*Bengal Tenancy Act, Ch X, ss 104, cl. 2, 106, 107, and 108, cl. 2—Dispute as to entries in record-of-rights—Question as to status of raiyats—Civil Procedure Code, s 622*—Under Ch X of the Bengal Tenancy Act, there is to be (1) a framing of the record of rights, (2) a draft publication for a period of one month, during which time objections

revi- cor- ... other than entries of rents settled, are to be heard and decided Under s 107, the decisions of the settlement officer in all proceedings under the chapter are to have the force of decrees, and under s 108, cl 2, an appeal lies to the Special Judge from all decisions of the settlement officer, but it is only in cases under s. 106 decided by the Special Judge on appeal from the settlement officer that a second appeal lies

settlement officer in a case under s 104, cl 2, of the Act dealt with the question of the status of the raiyats, and was passed before the record had been framed, and after the record had been framed, there was no dispute as to the correctness of any entry, except the entries of the rent settled—*Held* that the order of the Special Judge on appeal from such decision of the settlement officer was not one passed in a case under s 106, and therefore no second appeal lay from it to the High Court *Sheubarat Koer* v. *Nirpat Roy, I L R, 16 Calc, 596, Lala Kirat Narain* v *Palakdhari Pandey, I L R, 17 Calc, 326* referred to *Held* also that the case was not one which required the interference of the High Court under s. 622 of the Civil Procedure Code. GOPI NATH MASANT v ADOITA NAIK [I L. R, 21 Calc, 776

67 ———— Special Judge, Order of—*Bengal Tenancy Act (VIII of 1885), ss. 106 and 108—Boundary dispute—Bengal Survey Act (Beng Act V of 1875), Part V, s 40—Settlement officer acting as survey officer*—A second

which had been tried and decided by a settlement officer acting as a survey officer under Part V of the Bengal Survey Act (Bengal Act V of 1875) IRSHAD ALI CHOWDHRY v KANTA PERSHAD HAZAREE . I L R., 21 Calc, 935

68. ———— *Bengal Tenancy Act (VIII of 1885), Ch X, ss. 106 and 108—Record-of-rights, Dispute prior to the preparation of—Standard of measurement, Question of*—In a proceeding under Ch X of the Bengal Tenancy Act, a dispute arose between the parties, before the preparation of the record of rights, on the question of the local standard of measurement The settlement officer decided the case in favour of the plaintiffs, and, on appeal to the Special Judge, the decision was upheld. *Held* that the order of the settlement officer was not one under s 106 of the Bengal Tenancy Act, and under cl 3 of s 108 no second appeal lay to the High Court *Gopinath*

SPECIAL OR SECOND APPEAL —*continued.*

1. ORDERS SUBJECT OR NOT TO APPEAL —*continued.*

Masant v. *Adoita Naik, I. L. R., 21 Calc., 776,* referred to. ANAND LAL PARIA *v.* SHIB CHUNDER MUKERJEE . . I. L. R., 22 Calc., 477

69. ——————— *Special Judge, Decision of—Revenue officer, Decision of—Bengal Tenancy Act (VIII of 1885), ss. 105, 106, and 108 (3)—Record-of-rights, Dispute prior to completion of—Dispute about proposed entry or omission in the record.*—The respondent, in the course of proceedings for the record-of-rights in the village, of which he was the landlord, applied for the settlement of fair rents. The appellant claimed to be a raiyat holding at a fixed rent. The respondent denied the validity of the claim. This dispute gave rise to a case between them which was decided by the revenue officer against the appellant, who then appealed to the Special Judge, with the result that the decision on that question was confirmed. At the time of the revenue officer's decision no record-of-rights had been completed under s. 105 (1) of the Bengal Tenancy Act. On appeal to the High Court, the respondent took the preliminary objection that no appeal lay under s. 108 (3), as the case was not one under s. 106. *Held* that the decision of the revenue officer was a decision in a proceeding under s. 106 of the Bengal Tenancy Act, and that a second appeal lay from the decision of the Special Judge to the High Court. *Gopi Nath Masant* v. *Adoita Naik, I. L. R., 21 Calc., 776,* and *Anand Lal Paria* v. *Shib Chunder Mukerjee, I. L. R., 22 Calc., 477,* so far as they decide that a second appeal would not lie in such a case, overruled. DENGU KAZI *v.* NOBIN KISSORI CHOWDHRANI

[I. L. R., 24 Calc., 462
1 C. W. N., 294

70. ——————— *Bengal Tenancy Act (VIII of 1885), ss. 104, 106, 108—Special Judge under the Bengal Tenancy Act—Question of standard of measurement, area of lands, and liability to pay rent—Decision of the Special Judge.*—Under the terms of s. 108 of the Bengal Tenancy Act (VIII of 1885), a second appeal lies from the decision of the Special Judge on questions with regard to the prevailing standard of measurement, area of lands in the possession of tenants, and the liability of the tenants to pay rent on account of any excess lands in their possession. MATHURA MOHUN LAHIRI *v.* UMA SUNDARI DEBI

[I. L. R., 25 Calc., 34

71. ——————— *Bengal Tenancy Act (VIII of 1885), ss. 105, 106, 108—Order of Special Judge as to standard of measurement of lands.*—An order of the Special Judge as to the length of the standard of measurement to be used in measuring certain lands is not a decision in a case under s. 106 of the Bengal Tenancy Act, and therefore no second appeal lies from such an order to the High Court. *Mathura Mohun Lahiri* v. *Uma Sundari Debi, I. L. R., 25 Calc., 34,* and *Dengu Kasi* v. *Nobin Kissori Chowdhrani, I. L. R., 24 Calc., 462,* distinguished. NAROHARY JANA *v.* HARI CHARAN PRAMANICK I. L. R., 28 Calc., 556

72. ——————— *Bengal Tenancy Act (VIII of 1885), s. 153—Execution of rent decree valued at less than R100—Civil Procedure Code (Act XIV of 1882), s. 647.*—Where the original suit is a suit for rent valued at less than R100 and the decree or order made in it does not decide a question relating to title to land or some interest in land as between parties having conflicting claims thereto, or a question of a right to enhance or vary the rent of a tenant, or a question of the amount of rent annually payable by a tenant, no second appeal will lie in respect of an order made in execution proceedings relating thereto. SHYAMA CHARAN MITTER *v.* DEBENDRA NATH MUKERJEE

[I. L. R., 27 Calc., 484
4 C. W. N., 269

73. ——————— *Bengal Tenancy Act (VIII of 1885), s. 153—Determination of annual rent payable—Rate of rent.*—Where the lower Appellate Court, in deciding the question as to the amount of rent annually payable, found that the plaintiff had failed to prove the rate of rent claimed by him, and therefore gave him a decree at the rate admitted by the defendant,—*Held* that this was not a determination of the annual rent payable, and therefore no second appeal lay. NEIKAJEE *v.* NANDA DULAL . . . . 1 C. W. N., 711

74. ——————— *Suit for rent—Interest on rent—Bengal Tenancy Act (VIII of 1885), ss. 3, cl. (5), and 153.*—Interest on rent is not rent within the meaning of s. 3, cl. (5), of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the question is one relating to rate of interest and the value of the subject-matter of the suit is less than R100. KOYLASH CHANDRA DE *v.* TARAK NATH MANDAL

[I. L. R., 25 Calc., 571 note

75. ——————— *Bengal Tenancy Act (VIII of 1885), s. 153—Rent payable by the tenant not in issue in the appeal.*—Under s. 153 of the Bengal Tenancy Act, a second appeal lies in a rent suit whenever the decree of the Appellate Court has decided a question of the amount of rent annually payable by a tenant; it is not necessary that the amount of rent payable by the tenant should be a matter in issue in the second appeal. RAI CHURN GHOSE *v.* KUMUD MOHAN DUTTA CHAUDHURI

[1 C. W. N., 687

In the same case on review,—*Held* the question relating to instalments, though it affects the question of interest on the rent, is not a question of "the amount of rent annually payable" within the meaning of s. 153 of the Bengal Tenancy Act. Therefore no second appeal would lie in a case where the value of the suit is less than R100, even if there is a question as to the instalment of rent. *Koylash Chandra De* v. *Tarak Nath Mandal, I. L. R., 25*

SPECIAL OR SECOND APPEAL
—*continued*

1 ORDERS SUBJECT OR NOT TO APPEAL
—*continued.*

Calc , 571 (note), referred to RAI CHARAN GHOSE v KUMUD MOHAN DUTTA CHOWDHRY
[I. L R., 25 Calc , 571
2 C W. N , 297

76. ———— Appeal from District Judge —*Proceeding to be adopted when a District Court*

sued the others in a Subordinate Court to recover their distributive share under Mahomedan law The property to be divided was more than Rs 000 in value, but the share claimed by the plaintiffs was less The Subordinate Judge passed a decree, against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation to the High Court. The appellants preferred a second appeal to the High Court against the decision of the District Judge, and also presented a petition praying for the revision of his proceedings under the Civil Procedure Code, s 622 *Held* that neither a second appeal (which did not lie in such a case) nor a petition under the Civil Procedure Code s. 622 was the appropriate proceeding to be adopted by the appellants but an appeal as from an order made under the Civil Procedure Code ss, 57, 582 which would lie under ss 588, cl (c), and 589 The error of the appellants being one of form merely, the Court amended the second appeal as an appeal from an order of the District Court, and directed the District Judge to receive and dispose of the appeal from the Subordinate Judge KUNHIKUTTI v ACHOTTI
[I. L R., 14 Mad , 462

77. ———— Suits under Chota Nagpore Landlord and Tenant Procedure Act (Beng Act I of 1879), ss 37, 137—*Arrears of rent and ejectment, Suit for* —In suits instituted under Bengal Act I of 18 9 for arrears of rent and ejectment on account of the non payment of arrears of rent a second appeal lies to the High Court, this class of cases not being within the provision of s 137 of the same Act RAMJAN KHAN v RAMAN CHAMAR
I L R , 10 Calc , 89

78. ———— Suit for arrears of rent—

Ramjan Khan v *Raman Chamar, I L R 10 Calc , 89 11 C L R , 480* and *Priag Nath Sah Deo* v *Muri Munda, I L. R 24 Calc 249*, so far as they held that a second appeal did lie in cases of this nature arising under Bengal Act I of 1879, were wrongly decided KHEDU MAHTO v BUDHUN MAHTO
I L R , 27 Calc , 508
[4 C W N , 333

SPECIAL OR SECOND APPEAL
—*continued*

1. ORDERS SUBJECT OR NOT TO APPEAL
—*concluded*

Contra, PRIAG NATH SAHA DEO v MURA MUNDA
[I L R , 24 Calc , 249

2 RIGHT OF APPEAL

79 ———— Appeal by one defendant against another —A special appeal cannot be entertained by one defendant against another RAMESSUR GHOSE v AZEEM JOARDAR
17 W. R , 373

80 ———— Right of parties not appealing from first Court's decision—*Ground of appeal* —Parties who did not appeal from the decision of the first Court cannot bring a special appeal against the decision of the lower Appellate Court on the ground that the decision of the first Court prejudiced their rights BOYKANT RAM SAHOO v POORNO CHUNDER DASS
[W R , 1864, Act X, 97

81 ———— Right of defendant not appearing as respondent on appeal —A defendant who obtains a judgment in his favour in the Court of first instance, and who on appeal by the plaintiff does not appear at the hearing of the appeal or present a petition for a re-hearing may under Act X of 1877, present a second appeal against the decree of the lower Appellate Court EX PARTE MODALATHA
I L R., 2 Mad , 75

82 ———— Party dissatisfied with findings in judgment—*Civil Procedure Code (Act X of 1877), ss 540 and 584* —An appellant who has obtained a decree setting aside the decision of the Court of first instance is not entitled to a further appeal to the High Court, on the ground that he is dissatisfied with some of the findings recorded in the judgment of the lower Appellate Court, an appeal from an appellate decree under s 584 being strictly restricted to matters contained in the decree alone KOYLASH CHUNDER KOOSARI v RAM LALL NAG
[I. L R., 6 Calc , 206

3 ADMISSION OR SUMMARY REJECTION OF APPEAL

83 ———— Summary rejection of memorandum—*Civil Procedure Code, ss 54, 543, 551, 582, 584—Reasons for rejection* —*Per* EDGE, C J. —A Judge to whom a memorandum of appeal from an appellate decree is presented for admission is entitled to consider whether any of the grounds mentioned in s 584 of the Code of Civil Procedure in fact exist and apply to the case before him and, if they do not, to reject the memorandum of appeal summarily S. 551 of the Code of Civil Procedure applies to appeals which have been admitted *Per* AIKMAN, J —When a memorandum of appeal is summarily rejected, whether under s 543 or under s 54 read with s 582 of the Code of Civil Procedure, the reasons for such rejection should be recorded *sed quære* whether, unless it appears from the memorandum of appeal taken by itself that a second appeal does not lie, a

3. ADMISSION OR SUMMARY REJECTION OF APPEAL—*concluded.*

cond appeal can be summarily rejected, and should ot rather be dealt with under s. 551 of the Code. *emble*—That a ground of appeal to the effect that ie lower Appellate Court has misconstrued a docuient is not one of the grounds of second appeal ontemplated by s. 584 of the Code of Civil Proceure. RUDR PRASAD *v.* BAIJNATH

[I. L. R., 15 All., 367

84. ——— Confirmation of decree in ffect—*Civil Procedure Code (1882), s. 551.*—The ecision of the Full Bench in *Puhuvayyangar . Seshayyangar, I. L. R., 18 Mad., 214*, where it was eld that the jurisdiction of a Court of first instance amend a decree under s. 206 of the Civil Proceure Code is ousted by the confirmation of that ecree on appeal, applies equally to second appeals ismissed under s. 551 of the Code and to second ppeals tried after notice to the respondent. MUNIAMI NAIDU *v.* MUNISAMI REDDI

[I. L. R., 22 Mad., 293

4. SMALL CAUSE COURT SUITS.

(*a*) GENERAL CASES.

85. ——— Frame of suit—*Civil Proedure Code, s. 586.*—For the purpose of determining hether a second appeal lies or is prohibited by 586 of the Civil Procedure Code, what must be oked at is not the shape in which the case comes up o the High Court, but the shape in which the suit as originally instituted in the Court of first nstance. KIAM-UD-DIN *v.* RAJJO

[I. L. R., 11 All., 13

86. ——— Cases in which appeal is aken away—*Act XXIII of 1861, s. 27—Civil Procedure Code, 1859, s. 387.*—S. 27, Act XXIII f 1861, took away special appeal in all those cases hat were expressly alluded to therein, thus overiding s. 387, Act VIII of 1859. The provision pplied in execution of decree, as well as in suits hemselves, and to suits and proceedings in execution ommenced before 1861, or even before 1859. RAM ADUB CHATTERJEE *v.* RASH MONEE DOSSEE

[8 W. R., 321

MOBARUKOONISSA BEGUM *v.* OZEER JEMADAR

[8 W. R., 107

SOORJO COOMAR SURMA ROY *v.* KRISHTO COOMAR CHOWDHRY

[12 B. L. R., 224: 14 W. R., F. B., 30

87.——— Order in execution of decree —*Suit brought before Act XLII of 1860.*—No pecial appeal lay from a regular appeal from an rder made in execution of a decree passed in a suit f a nature cognizable by a Small Cause Court, hough the suit was instituted before the passing of ct XLII of 1860. GORA CHAND MISSER *v.* BOYANTO NARAIN SINGH

[12 B. L. R., F. B., 261: 20 W. R., 421

4. SMALL CAUSE COURT SUITS—*continued.*

BHICHUK SINGH *v.* NAGESHAR NATH

[I. L. R., 2 All., 112

88. ——— *Act XXIII of 1861; s. 27—Execution proceedings arising out of decision in regular appeal.*—S. 27, Act XXIII of 1861, barred a special appeal in execution proceedings arising out of decisions passed on regular appeal in suits of a nature cognizable by Courts of Small Causes. ANUND CHUNDER ROY *v.* SIDHY GOPAL MISSER . . . . . 8 W. R., 112

DEBEE PERSHAD SINGH *v.* DELAWAR ALI

[12 W. R., 86

89. ——— *Civil Procedure Code, s. 586—Orders in execution of decrees in Small Cause suits.*—No second appeal lies from an order passed in execution of a decree in a suit of the nature cognizable by a Small Cause Court where the subject-matter of the suit does not exceed R500. AITHALA *v.* SUBBANNA . I. L. R., 12 Mad., 116

90. ——— *Order in execution of decree in suit cognizable by Small Cause Court.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes and the subject-matter of the suit does not exceed R500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto. *Harakh* v. *Ram Sarup, I. L. R., 12 All., 579*, approved. *Sri Bullov Bhattacharji* v. *Baburam Chattopadhya, I. L. R., 11 Calc., 169*, and *Arithala* v. *Subbanna, I. L. R., 12 Mad., 116*, referred to. DIN DAYAL *v.* PATRA KHAN . . . I. L. R., 18 All., 481

91. ——— *Suit of the nature cognizable in Courts of Small Causes—Transfer of decree—Civil Procedure Code, ss. 223, 228, 586.*—Where the original suit is a suit of the nature cognizable in Courts of Small Causes, and the subject-matter of the suit does not exceed R500 in value, no second appeal will lie in respect of an order made in execution proceedings relating thereto, whether such proceedings are taken in the Court which passed the decree or in that to which the decree may have been transferred for execution. *Nazar Husain* v. *Kesri Mal, I. L. R., 12 All., 581*, approved. HARAKH *v.* RAM SARUP . I. L. R., 12 All., 579

92. ——— *Suit of the nature cognizable in Court of Small Causes—Civil Procedure Code, ss. 586, 622—Superintendence of High Court.*—For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. Therefore where execution was applied for in the Munsif's Court in respect of a sum of R422-14-0, the value of the matter in dispute in the original suit (which was of the nature cognizable by a Court of Small Causes) having been above R500 and the Munsif's order having been upheld in appeal by

SPECIAL OR SECOND APPEAL —*continued*

4. SMALL CAUSE COURT SUITS—*continued*

the District Judge, revision of both orders was applied for in the High Court *Held* that no proceedings by way of revision could be taken, because a second appeal would lie from the order of the District Judge NAZAR HUSAIN v KESRI MAL [I L. R., 12 All., 581

93 ——— *Suit of nature*

transferred it for execution to the Munsif under ss 223 and 224 of the Civil Procedure Code the Munsif passed an order in execution, and the order was confirmed in appeal *Held* that the words "suit of the nature cognizable in Courts of Small Causes" in s 586 of the Code is equally applicable, whether the suit be brought in a Court of Small Causes or in any other Court, that s 586 controls s 228 in a case of this kind and no second appeal would lie from the Munsif's order *Harakh* v *Ram Sarup, I L R, 19 All, 579,* cited and approved LALA KANDHA PERSHAD v LALA LAL BEHARY LAL [I. L. R, 25 Calc, 872

See SHYAMA CHARAN MITTER v DEBENDRA NATH MUKERJEE I. L R, 27 Calc, 484 [4 C W N, 269

94 ——— Case wrongly decided to be not cognizable by Civil Court—*Act XXIII of 1861, s 27*—S 27, Act XXIII of 1861, which barred a special appeal in suits below R500, as being of a nature cognizable by a Small Cause Court, did not apply to a case in which the lower Appellate Court had wrongly decided that the case was not cognizable by any Civil Court GUREEBOOLLAH v SYEFOOLLAH . . . 7 W R, 41

95 ——— Suit instituted in ordinary Civil Court, though cognizable by Small

though a question of title has been raised by the defendant and decided *Per* MUTTUSAMI AYYAR, J —The question what is a suit of the nature cognizable in Courts of Small Causes within the meaning of s 586 of the Civil Procedure Code has reference to the mode of adjudication and not to the forum, and the fact that the suit is instituted in the District *Munsif's Court, and not in a Court of summary* jurisdiction makes no difference for the purposes of that section If the matter adjudicated on in a

of that suit MANAPPA MUDALI v McCARTHY [I. L. R., 3 Mad., 192

96 ——— *Civil Procedure Code, 1882, s 586*—Where a suit, though one cog-

been instituted in an ordinary Civil Court and dealt with there would not for that reason admit of a second appeal which in such a case is expressly excluded by s 586 of the Code of Civil Procedure (Act XIV of 1882) KALIAN DAYAL v. KALIAN NAKER [I. L. R., 9 Bom, 259

97 ——— Suit transferred to regular side—*Civil Procedure Code, s 585—Provincial Small Cause Courts Act (IX of 1887), s 25*—A suit of a nature cognizable by a Small Cause Court

ground that the suit involved questions of title A second appeal therefore does not lie in such a case MUTTUKARUPPAN v SELLAN [I L R., 15 Mad., 98

98 ——— Question of jurisdiction—*Provincial Small Cause Courts Act (IX of 1887), s 16—Civil Procedure Code (Act XIV of 1882), ss*

Act

of

Court has on a case being submitted to it under s. 646B of the Civil Procedure Code, full power to consider the matter of jurisdiction or to deal with it on the merits so as to do substantial justice without putting the parties to the expense of a fresh trial Where a suit, cognizable by a Small Cause Court, was tried both in the Munsif's and District Judge's Courts without objection to the jurisdiction,—*Held,* on a second appeal to the High Court that s 646B of the Civil Procedure Code must be read with s 16 of the Provincial Small Cause Courts Act so as to modify its full effect in a case wrongly tried by an ordinary Civil Court and taken in appeal to the District Court both parties having submitted to the jurisdiction, it was not competent to either of them on second appeal to plead the want of jurisdiction so as to render the proceedings taken in the suit void SURESH CHUNDER MAITRA v KRISTO RANGINI DASI [I L R., 21 Calc, 249

(b) ACCOUNT.

99 ——— Suit for balance of account—*Act XXIII of 1861, s 27—Suit in Civil Court in local jurisdiction of Small Cause Court*—Where a suit for a balance due on account of rents collected from the plaintiff's zamindaris by the defendant's

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

father acting as agent of the plaintiffs for an amount under R500 was entertained by the Civil Court within the local jurisdiction of a Small Cause Court, a special appeal lay to the High Court, s. 27 of Act XXIII of 1861 only applying to a suit which is properly brought in a Civil Court, because there is no Small Cause Court having jurisdiction to try it. DYEBUKEE NUNDUN SEN *v.* MUDDEE MUTTY GOOPTA

[I. L. R., 1 Calc., 123 : 24 W. R., 478

100. ———— **Suit against agent for account**—*Suit for account, or, in default, for damages.*—Plaintiff, a talukhdar, sued her late husband's agent for the delivery up of certain account papers and documents, for an account of his agency, and, in default of account, for R500 as damages. *Held* that the suit was of a nature cognizable by a Small Cause Court, and that consequently no special appeal would lie. HURRI NARAIN ROY CHOWDHRY *v.* JOY DURGA DASSI . . . . . 2 C. L. R., 17

(*c*) AWARD.

101. ———— **Decision on award**—*Award of cognizable nature and value.*—When the subject-matter of an award is as to its nature and value cognizable by a Court of Small Causes, no special appeal will lie to the High Court against the decree of an ordinary Civil Court in respect of such award. BANU *v.* NARAYAN SAHU

[4 B. L. R., Ap., 82 : 13 W. R., 233

102. ———— **Suit on award**—*Award dealing with matters not within cognizance of Small Cause Court—Act XXIII of 1861, s. 27.*—*G* and *R* referred to arbitration disputes between them regarding the partition of their paternal estate. The award found that a sum of R338 was due by *G* to *R*, and contained other provisions which could not be dealt with by a suit in a Small Cause Court. *Held* that a suit to recover the money due under the award could not be brought in the Small Cause Court, and that s. 97, Act XXIII of 1861, therefore did not bar a special appeal. GAURI SAHAI *v.* RAM SAHAI

[7 N. W., 157

(*d*) CONTRACT.

103. ———— **Suit to recover collections from co-sharer**—*Agreement to pay share to other co-sharers.*—A suit by a co-sharer to recover from the defendant collections which are in his charge and which he is under agreement to pay to the other co-sharers is a suit for due under a contract, and, if less than R500, is cognizable by a Small Cause Court. ALI AHMED *v.* OODHRAJ RAM . . 10 W. R., 79

104. ———— **Suit against agent for money**—*Money received for plaintiff—Act XXIII of 1861, s. 27.*—In a suit to recover the balance, unaccounted for, of the plaintiff's money in the hands of the defendant, who had been employed as a law agent on a salary to conduct and look after the plaintiff's law suits and to receive and disburse moneys connected with such suits, it was held that the case might be brought under the terms "claim for money due under a contract" in Act XI of 1865, s. 6, and that therefore under Act XXIII of 1861, s. 27, a special appeal would not lie. JOOGUL KISHORE ROY *v.* RUGHOO NATH SEAL . . . . 20 W. R., 4

105. ———— **Suit on implied contract**—*Suit against co-sharers for share of rent—Civil Procedure Code, 1877, s. 586.*—*A* was the proprietor of 9 annas of a mouzah, *B* and his family of 1 anna, and *C* and others of the remaining 6 annas. *B* and his family, having occupied and enjoyed, to the exclusion of their co-shareholders, 54 bighas of the mouzah, failed to pay any rent in respect of such occupation. *A* instituted a suit against them (making *C* and the other holders of the 6 annas share defendants to the suit) to recover the sum of R412-8 as the sum justly due to him after making all proper deductions, including as well the share of the rent of the 54 bighas to which the 6 annas shareholders were entitled as also the share which *B* and his family were entitled to retain as proprietors of a 1 anna share. *Held* that the facts showed an implied contract on the part of *B* and his family to pay to their co-shareholders whatever, upon taking an account, should appear to be due to them; and that, inasmuch as the total amount sought to be recovered in the suit by *A* did not exceed R500, the suit was one which might have been brought in a Small Cause Court, and therefore the plaintiff had no right of second appeal to the High Court under s. 586 of the Code of Civil Procedure. ASMAN SINGH *v.* DOORGA ROY . I. L. R., 6 Calc., 284 : 7 C. L. R., 94

106. ———— *Contract Act (IX of 1872), ss. 69, 70—Small Cause Court Act (XI of 1865), s. 6—Patni rent—Implied contract.*—The plaintiff, a purchaser in execution of a patni right, brought a suit in a Munsif's Court to recover from the defendant, a former holder of the patni right, a sum of money which she had been compelled to pay to the zamindar for rent which had accrued due prior to the date of her purchase. The Munsif gave the plaintiff a decree, which, however, on appeal to the District Judge, was reversed. On appeal to the High Court,—*Held* that, assuming the suit to lie independently of any express promise, it was one cognizable by a Court of Small Causes, and no appeal would therefore lie. *Rambux Chittangeo* v. *Madhoosoodun Paul Chowdhry, B. L. R., Sup. Vol., 675 : 7 W. R., 377*, distinguished. Cases falling within the provisions of ss. 69 and 70 of the Contract Act are cognizable by a Court of Small Causes under s. 6 of Act XI of 1865. *Nath Prasad* v. *Baij Nath, I. L. R., 3 All., 66*, approved. KRISHNO KAMINI CHOWDHRANI *v.* GOPI MOHUN GHOSE HAZRA

[I. L. R., 15 Calc., 652

107. ———— *Mofussil Small Cause Courts Act, s. 6—Civil Procedure Code, s. 586—Suit against sons of Hindu debtor, on a bond executed by father, not cognizable by Small Cause Court—Hindu law—Liability of son for debt*

SPECIAL OR SECOND APPEAL —*continued*

4 SMALL CAUSE COURT SUITS—*continued*

of living father —In a suit upon a bond executed by a Hindu, the plaintiff made the debtor's sons defendants along with their father, and a decree was passed against the father and sons jointly for payment of the debt *Held* by the Full Bench that the suit as against the sons was not a suit of the nature cognizable in a Court of Small Causes within the meaning of s 586 of the Code of Civil Procedure *Held* further by the Divisional Bench that the decree against the sons was bad. NARASINGHA v SUBBA [I L. R., 12 Mad., 139

108 ——— *Civil Procedure Code, s 586—Provincial Small Cause Courts Act, sch II, art 41—Suit relating to contract—Con*

The defendant's share of the assessment fell into arrear, and was collected from the plaintiffs who now

v. *Gopi Mohun Ghose Hazra I L R 15 Calc*, *652*, followed SRINIVASA v. SIVAKOLUNDU [I. L. R., 12 Mad, 349

(*e*) CONTRIBUTION

109. ——— **Suit for contribution for revenue paid to save estate** —A claim for money below R500 paid as revenue by one partner in an estate on account of another, in order to save the whole estate from sale, arises under an implied contract between them, and therefore is cognizable by a Small Cause Court No special appeal lay in such a case under s 27, Act XXIII of 1861 RAM MONEY DOSSIA v PEAREE MOHUN MOZOOMDAR [6 W. R, 325

(*f*) CUSTOMARY PAYMENT

110 ——— **Suit by zamindar against patnidar for dak expenses**—*Act XXIII of 1861, s 27* —A case in which a zamindar sues a patnidar for dâk expenses according to his patni jumma, is of a nature cognizable by a Court of Small Causes, and as such, by s 27, Act XXIII of 1861, no special appeal will lie DHEERAJ MAHTAB CHUND BAHADOOR v RADHA BINODE CHOWDHRY [8 W. R, 517

ERSKINE v TRILOCHUN CHATTERJEE [9 W. R., 518

(*g*) DAMAGES

111. ——— **Suit for damages**—*Damages to moveable or immoveable property* —No special appeal lies in a suit for damages below R500, whether the damages are on account of moveable or immoveable property. BHEENUCK LALL MAHTOON v. RUNG LALL MAHTOON . . 11 W. R, 369

SPECIAL OR SECOND APPEAL —*continued*

4. SMALL CAUSE COURT SUITS—*continued.*

112 ——— **Suit where claim for dam-** given for 61, s 27 — eeded R500, and the Court gave the plaintiff less than R500 damages,—*Held* that the right of appeal was not taken away by Act XXIII of 1861 s 27 NEEL MONEE SINGH DEO v GORDON, STUART & Co [1 Ind Jur, N S, 356 6 W R, 152

113. ——— **Suit for damages for illegal arrest**—*Proceedings in execution of decree against surety* —A decree holder having taken out execution, the judgment debtor paid a sum of money in satisfaction of the decree, and got a surety to execute a security bond on his behalf The decree holder s 204 Act and realized decree The damages for illegal arrest, the sum claimed not exceeding R500 *Held* that the suit was cognizable by a Small Cause Court, and that under s 27 Act XXIII of 1861, no appeal would lie TOOLSEE RAM v. NUND KISHORE LALL . . . 12 W R, 471

114 ——— **Suit for damages for assault**—*Absence of pecuniary injury* —No suit for damages occasioned by personal injury will lie in the Small Cause Courts, unless actual pecuniary loss has resulted from such injury to the plaintiff When there is no such pecuniary loss, the suit for damages will lie in the ordinary Civil Courts and a special appeal will lie to the High Court, although the damages claimed are below R500 ALI BUKSH v SAMIRUDDIN [4 B L R, A. C, 31. 12 W R, 477

RAJ CHUNDER CHUCKERBUTTY v PUNCHANUN SURMAH CHOWDHRY 4 W R, 7

115 ——— **Suit for damages for personal injury**—*Actual pecuniary damage* —The plaintiff, in a suit for damages laid at R200, claimed R50 on account of medical expenses caused by an assault committed on him by the defendants, R50 as the costs of a criminal prosecution which he had brought against them, and R100 for injury to his reputation and feelings *Held* that inasmuch as part of the claim related to alleged actual pecuniary damage resulting from an alleged personal injury, the whole suit was, with reference to s 6, proviso (3), of the Mofussil Small Cause Courts Act (XI of

[I. L R, 10 All, 49

116 ——— **Suit for money paid by unsuccessful claimant to attached property** —*Civil Procedure Code, 1859 s 246* —A suit for money paid by an unsuccessful claimant, under s 246, Act VIII of 1859, in order to save from sale

SPECIAL OR SECOND APPEAL—continued.

4. SMALL CAUSE COURT SUITS—*continued.*

his share of an estate which had been attached in execution of a decree, is in reality a suit for damages, and (the value being below R500) is in the nature of a Small Cause Court suit in which no special appeal will lie. POORSUTTUM CHUNDER *v.* GOUR SOONDER PANDEY . . . 18 W. R., 283

117. ——— **Suit to recover money attached**—*Removal of attachment on wrongful objection to attachment of property.*—*C*, a decree-holder, alleging that *K*, a lambardar of a village, had objected to the attachment in his hands of money due as profits to the judgment-debtor, a co-sharer, on the ground that he had paid such money to the judgment-debtor before the attachment, by reason whereof the attachment had been removed, and that such objection was dishonest and wrongful, inasmuch as such money was still in *K*'s hands sued *K* for the amount of such money and the costs of the attachment proceedings. *Held* that the suit was one for damages, and, the amount claimed not exceeding R500, one of the nature cognizable in a Court of Small Causes, and consequently a second appeal in the suit would not lie. KALIAN SINGH *v.* CHUNNI LAL . . . I. L. R., 6 All., 10

118. ——— **Suit for money lent to redeem mortgage**—*Suit for damages as on breach of contract—Act XXIII of 1861, s. 27.*—Defendant borrowed a sum of money below R500 from the plaintiff, with a view to redeem a mortgage on condition that, after redemption, he would sell the property to the plaintiff. He did not, however, redeem the property. *Held* that plaintiff's suit to recover his dues was one for damages as upon a breach of contract in which, under s. 27, Act XXIII of 1861, no special appeal would lie. KHULLEEL MAHOMED *v.* FURZAM ALLY . . . 12 W. R., 269

119. ——— **Suit for damages for breach of contract controlling terms of decree.**—No special appeal lies in a suit for damages for breach of a private arrangement by which the parties agree to control the terms of a decree, when the amount is within the jurisdiction of the Small Cause Court. CHUNDY PERSAD DOSS *v.* KASSEENATH DOSS [W. R., 1864, 346

120. ——— **Suit for damages to crops by inundation**—*Omission to cut-bund—Act XLII of 1860, s. 3.*—Under s. 3, Act XLII of 1860, a suit for damages of any kind below R500 (*e.g.*, a suit for damages for not cutting through a bund whereby plaintiff's crops were destroyed in consequence of accumulation of water) was cognizable by a Small Cause Court; and consequently, under s. 27, Act XXIII of 1861, no special appeal lay in such a case. GOPEENATH PAUL *v.* GEORGE [6 W. R., 7

121. ——— **Suit for damages for inadequate sale of decree**—*Act XXIII of 1861, s. 27.*—No special appeal lay under s. 27, Act XXIII of 1861, for damages for inadequate sale of a decree. KRISTOMONEE THAKOOR *v.* BISHAMBHUR DOSS [5 W. R., 215

122. ——— **Suit for defamation of character**—*Absence of pecuniary injury.*—Suits for defamation of character, where there has not been any actual pecuniary loss, were not, under cl. 3, s. 6, Act XI of 1865, cognizable by the Small Cause Courts, and therefore in such a suit a special appeal would lie under Act XXIII of 1861, s. 27. BHAIRAB CHANDRA CHUCKERBUTTY *v.* MAHENDRA CHANDRA CHUCKERBUTTY [4 B. L. R., Ap., 59: 13 W. R., 118

123. ——— *Absence of pecuniary damage.*—*Quære*—Before a suit can lie in a case of defamation of character, is it necessary to presume that actual pecuniary damage has resulted? DHURMO DOSS KOONDOO *v.* KOYLASH KAMINEE DOSSIA . . . . . 12 W. R., 372

124. ——— **Suit for malicious prosecution**—*Absence of pecuniary damage.*—The defendant laid a charge of assault against the plaintiff before the Magistrate, and the charge was heard and dismissed. The plaintiff then brought a suit for damages occasioned to his reputation by the false and malicious charge, laying the damages at R150; but no actual pecuniary loss in consequence of the charge was alleged. *Held* that it was not a suit cognizable by the Small Cause Court, and therefore a special appeal would lie. PRANKRISHNA BANERJEE *v.* NADIAR CHAND CHATTERJEE [4 B. L. R., A. C., 35 note: 10 W. R., 115

125. ——— *Injury to reputation.*—The defendant charged the plaintiff with plotting to murder him, and the case came before the Magistrate and was dismissed. The plaintiff then sued in the Munsif's Court for damages on account of the injury "to his reputation and pain of body and mind" caused by the malicious prosecution, and laid the damages at R100. A special appeal to the High Court was dismissed on the ground that it was a suit cognizable by a Small Cause Court. NADIAR CHAND ROY *v.* BAIKANT NATH MISSER [4 B. L. R., A. C., 33 note

126. ——— **Suit for damages for loss of reputation and business.**—A suit for damages not exceeding R500 on account partly for injury to reputation and partly for loss in business and professional position was held to come within the provisions of s. 6, Act XI of 1865, and was not open to special appeal. BROJO SOONDUR BHADOOREE *v.* ESHAN CHUNDER ROY . . 15 W. R., 179

127. ——— **Suit for money paid as rent to save estate from sale**—*Enforced payment where rent had been already paid—Act XXIII of 1861, s. 27—Act XI of 1865, s. 6—Act X of 1859, s. 23, cl. 2.*—The plaintiff, the holder of a patni talukh, by an arrangement with the defendants, his zamindars, paid the Government revenue and the road-cess tax for the year 1874, and then tendered the balance of the rent for that year to the defendants, but they refused to accept it; and he therefore deposited it in the Munsif's Court in accordance with s. 46

SPECIAL OR SECOND APPEAL
—*continued*

4. SMALL CAUSE COURT SUITS—*continued.*

of Bengal Act VIII of 1869. One of the defendants then took proceedings under Bengal Regulation VIII of 1819 to recover his share of the rent, and, notwithstanding the protest of the plaintiff that the rent had been already paid obtained an order for the sale of the tenure, and to prevent the sale the plaintiff had to pay the sum claimed for rent In a suit brought to recover that amount with interest,—*Held* it was a suit cognizable by a Court of Small Causes under s 6 of Act XI of 1865, and therefore a special appeal was barred by s 27, Act XXIII of 1861 It was not a suit for "damages on account of illegal exaction of rent" within the meaning of cl 2, s. 23 of Act X of 1859 KRISHNA KISHORE SHAHA v BIRESHUR MOZOOMDAR

[I. L. R, 4 Calc, 595: 3 C L R., 177

128 ———— Suit for payments made on account of rent—*Refusal to allow for such payments in rent account* —A suit to recover certain cash and the value of certain grain which the defendants had persuaded the plaintiff to pay them engaging that the lambardar would allow the same in his account (as part payment of rent), but which the lambardar refused to do, is practically a suit for damages, and, the amount in question being cognizable by a Small Cause Court, no special appeal can be entertained YACOOB ALI v. KOOER SINGH

[2 N. W., 111

sum of money which has been taken away by the defendants to the damage of the plaintiff and is therefore cognizable by the Small Cause Court, and under s 27, Act XXIII of 1861, no special appeal lies from a judgment passed in appeal in such a suit LASMANIA DEBIA v MAHOMMED HAFEZULLA

[3 B L. R., Ap, 96

S. C. RASMONEE DEBIA v MAHOMED HAFEZOOLLAH

[12 W. R, 29

130. ———— Suit for profits of land —*Provincial Small Cause Courts Act (IX of 1887)*,

The defendant raised a plea to the jurisdiction of the Court, and the Judge, without recording any

that no second appeal lay under the Civil Procedure Code, s 586 *Held* that the objection should prevail, since the suit was not excepted from the jurisdiction of the Small Cause Court under the Provincial Small Cause Courts Act of 1887 ANNAMALAI v. SUBRAMANYAN . I. L. R, 15 Mad., 298

(*h*) DEBTS

131 ———— Suit for division of debt due to estate of deceased —*Held* that a suit for division of debts due to the deceased's estate (the sum being ascertained) was cognizable by a Small Cause Court, and no special appeal lay to the High Court ODEYTA v GOPAL . . . 2 Agra, 234

(*i*) DECLARATORY DECREE

132 ———— Suit to have property made over to plaintiff on an adjusted account —Where, on an adjusted account between two parties one claims from the other some money and some grain which are shown to be due to him and asks in effect that they may be made over to him, the suit is not a suit for declaratory decree, and a special appeal does not lie in such a suit to the High Court under s 27 Act XXIII of 1861 BULDEO SINGH v RAM SURUN LALL 25 W. R., 234

(*j*) DECREE.

133. ———— Decree for land under a compromise in a suit cognizable by a Small Cause Court—*Act XXIII of 1861, s 27* —In a suit for recovery of a sum of money below R500, the parties entered into a compromise, whereby the defendant made over a certain piece of land in lieu of the money claimed, and a decree was passed accordingly In execution of the decree, disputes arose between the parties Upon special appeal by the judgment debtor to the High Court —*Held* that under s 27, Act XXIII of 1861 no special appeal lay to the High Court TALAN BIBI v TENU BIBI

[6 B. L. R., Ap, 82: 15 W. R, 65

(*k*) IMMOVEABLE PROPERTY.

134. ———— Suit for kattubadi and karnam's emoluments—*Civil Procedure Code (1882), s 586 —Provincial Small Cause Courts Act (IX of 1887), sch I, art 13* —Where plaintiff sued for arrears of kattubadi and karnam's emoluments, the value of the suit being less than R500,—*Held* that kattubadi and karnam's emoluments are neither a charge on, nor interest in, immoveable property, and that no second appeal lay MULLAPUDI BALAKRISHNAYYA v VENKATANARASIMHA APPA RAU

[I. L R., 19 Mad, 329

See VENKATARAMA DOSS v. MAHARAJAH OF VIZIANAGRAM . . I. L. R., 19 Mad., 103

SPECIAL OR SECOND APPEAL—*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

(*l*) MAINTENANCE.

135. ——— **Suit by widow for maintenance**—*Act XXIII of 1861, s. 27.*—A Hindu widow who had been supported by her father-in-law after his death sued his eldest son for maintenance and obtained a decree for R150, notwithstanding the defendant's objection that, being one of three brothers who inherited their father's estate, he was not solely liable for the maintenance claimed. *Held* that, as this was a Small Cause Court suit, an appeal did not lie. RAMCHANDRA DIKSHIT *v.* SAVITRIBAI

[4 Bom., A. C., 73

JUDAL KOM RANCHHOD MULJI *v.* HIRA MULJI

[4 Bom., A. C., 75

(*m*) MESNE PROFITS.

136. ——— **Suit for mesne profits**—*Act XXIII of 1861, s. 27—Suit under R50.*—A suit for the recovery of mesne profits not amounting to R50 is cognizable by a Court of Small Causes. A special appeal therefore does not lie in such a suit. KANAJI SAKHARAM *v.* GOVIND GANESH

[8 Bom., A. C., 93

137. ——— *Act XI of 1865, s. 6—Act XXIII of 1861, s. 27.*—In a suit brought in the Sudder Ameen's Court for R143 for mesne profits, it was objected on special appeal that under s. 27, Act XXIII of 1861, no special appeal would lie, the suit being cognizable by the Small Cause Court. *Held*, it being merely a suit for mesne profits and no question of title being involved in it, it was a suit for damages within s. 6, Act XI of 1865, and therefore cognizable by the Small Cause Court. RAM PERTAB DASS *v.* BHYRONATH MOOKERJEE

[2 B. L. R., S. N., 13: 10 W. R., 375

138. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. [illegible]*—Where the plaintiff, after obtaining a decree in a suit for possession of certain land of which he had been dispossessed by the defendants, brought a suit [illegible] for mesne profits for the period [illegible] he had been kept out of possession, [illegible] by the District Judge. *Held* that [illegible] a Small Cause Court [illegible] second appeal in the suit [illegible] the High Court. [illegible]

I. L. R., 19 Calc., 310

139. ——— [illegible] *mesne profits* [illegible] Provincial Small Cause Courts Act [illegible] [illegible]

[I. L. R., 20 Calc., 384

140. ——— *Provincial Small Cause Courts Act (IX of 1887), sch. II, art. 31—Suit for mesne profits under [illegible] Civil Procedure Code (Act XIV of 1882), s. 586.*—A suit for mesne profits is cognizable in Courts of Small Causes where the value of the subject-matter in dispute is less than R50, and art. 31 of sch. II of the Provincial Small Cause Courts Act does not apply thereto. Such a suit falls within the provisions of s. 586 of the Civil Procedure Code, and no second appeal lies from a decision in it. SRINIVASA AYYAR *v.* MARAKATHAMMAL

[I. L. R., 22 Mad., 138

LINGAYYA AYYAVARU *v.* MALLIKARJUNA AYYAVARU . . . **I. L. R., 22 Mad., 189 note**

(*n*) MONEY.

141. ——— **Suit for money had and received for the plaintiff's use.**—*C*, a mortgagee, the mortgage having been foreclosed, sued *D*, the mortgagor, for possession of the mortgaged property and obtained a decree for possession [illegible]. He subsequently agreed with *D* to surrender the mortgaged property to him if he deposited the mortgage-money in Court by a specified day. *D* raised the money for this purpose by means of a conditional sale of the property to *L*, and deposited it in Court. The deposit was made after the specified day, and consequently *C* took possession of the property. The money deposited by *D* remained in deposit, and, while there, *C* caused it to be attached in execution of a money-decree he held against *D*, and it was paid to him. *L* thereupon sued *C* in the Munsif's Court to recover such money, which amounted to R[illegible]. *Held* that the suit was in the nature of a suit for money had and received by the defendant for the use of the plaintiff, and was therefore cognizable in a Court of Small Causes. LACHMAN [illegible] *v.* CHHAMMI LAL . . . **I. L. R., 4 All., 9**

CHATURBHUJ OR CHATURBHAJ *v.* [illegible]

I. L. R., 4 All., 19

142. ——— **Suit to recover purchase-money**—*Act XXIII of 1861, s. 27.* [illegible]

1 Agra, 2[illegible]

143. ——— **Suit for money paid as [illegible] rent.** [illegible]

[2 [illegible]

[illegible] **I. L. R., [illegible]**

SPECIAL OR SECOND APPEAL
—continued

4. SMALL CAUSE COURT SUITS—*continued*

144. ———— Suit for money illegally levied on land—*Act X of 1876, s 15—Civil Procedure Code, 1876, s 586*—The plaintiff sued to recover from the defendant R71 3 3, alleging that the defendant had illegally levied the money on the plaintiff's land on account of enhanced summary settlement and local fund cess The defendant, being a minor, was represented by the Collector as his administrator The Assistant Judge who tried the suit awarded the plaintiff's claim The District Judge, on appeal, reduced the amount of the plaintiff's claim to R35-4-9, but upheld the decree of the first Court in other respects The defendant thereupon filed a second appeal in the High Court. *Held* that under the Civil Procedure Code (Act X of 1877), s. 586 no second appeal lay, as the suit was one cognizable by a Small Cause Court Act X of 1876, s 15, removes suits to which the Collector is a party from the jurisdiction of the Small Cause Court but the nature of the suit remains unaltered MUSA MIYA SAHEB v GULAM HUSEIN

[I. L R, 7 Bom, 100

145. ———— Suit by lessee for refund of revenue—*Contract to refund excess* In a suit by a lessee upon a contract for a refund of excess revenue remitted by Government, a special appeal is not admissible if the amount claimed be under R500 WHITE v TRIPORA SUNKUR MOOKERJEE

[W. R, 1864, 297

146 ——— Suit to recover money paid in excess of share of profits of land—A suit to recover from the defendant R235, paid to

appeal lay to the High Court COLLECTOR OF TIPPERA v MAFIZUNNISSA BIBEE

[4 B L. R, Ap, 46

(*o*) MORTGAGE

perty, is not a suit of a nature cognizable in Courts of Small Causes under s 27 of Act XXIII of 1861, so as to exclude a right to special appeal This is so, though the plaint on the face of it seeks recovery in the alternative, either from the mortgagor personally, or from the mortgaged property ATMARAM BALLAL KAGJI v SADASHIV HARI MAHAJANI 2 Bom, 1

149. ———— Suit for enforcement of hypothecation against moveable property—*Act XI of 1865, s 6* A suit by the assignee of a registered mortgage bond hypothecating certain crops to enforce the hypothecation is not a Small Cause Court suit within the meaning of s 6 of Act XI of 1865, in which a second appeal would be barred by s 586 of the Civil Procedure Code *Surajpal Singh* v *Jairamgir, I L R, 7 All, 855,* followed *Ram Gopal Shah* v *Ram Gopal Shah, 9 W R, 136,* and *Apparu Pillai* v *Subaiya Mupuen, 2 Mad, 47,* referred to KALKA PRASAD v CHANDAN SINGH . I. L. R, 10 All, 20

(*p*) MOVEABLE PROPERTY

150. ———— Suit for price of personal property sold—*Suit by co-sharer*—A suit lies in a Small Cause Court by a co sharer to recover the price of a share of personal property alienated by another co-sharer RADHANATH SHAHA v KAMEENEE SOONDEREE DOSSEE 2 W R, 37

151. ———— Suit for materials of hut, or their value—*Act XXIII of 1861, s 27*—A suit for the materials of a hut, in which the plaintiff sought for a decree to break up and remove them or to obtain their value (R29), was held to be a case cognizable by a Small Cause Court under Act XI of 1865 s 6, and therefore no special appeal would lie KASHEE CHUNDER DUTT v JUDOONATH CHUCKERBUTTY . . . 10 W R, 29

152. ———— Suit to recover possession of share of a boat—*Act XXIII of 1861, s 27*—A suit to recover possession of a share of a boat by establishment of the plaintiffs' right is a suit for personal property within the meaning of Act XI of 1865, s 6, and therefore no special appeal lies in such a case under Act XXIII of 1861, s 27. MAHOMED AZIM BHOOYAH v MAHOMED SOMEE

[21 W. R, 413

153. ———— Suit for the value of trees and fish—*Trees destroyed by defendant*—A suit to recover the value of a tree destroyed by the defendants and for the value of fish taken from the plaintiff's tank (the claim being under R500) is a suit cognizable by a Small Cause Court, and no special appeal lies to the High Court SUJJAD ALI v BHOLARAM . . . 5 N. W, 24

SPECIAL OR SECOND APPEAL—*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

a special appeal would not lie. SHAMANUND *v.* NUNDKOOMAR

[3 Agra, 290: Agra, F. B., Ed. 1874, 153

155. ———— **Suit for value of sugar-mill.** —A stone sugar-mill is moveable property, and a suit for the value of it, if under R500, will lie in the Small Cause Court. No special appeal lies therefore in such a suit. HURMUNGAL SINGH *v.* ATHUL SINGH

[4 N. W., 15

156. ———— **Suit by widow to recover personal property or its value taken from deceased**—*Act XXIII of 1861, s. 27.*—The widow and heiress of a deceased person sued the defendants to recover personal property, valued at R200, said to have been taken by them from deceased in his lifetime. *Held* that a special appeal was barred by s. 27, Act XXIII of 1861. KAPAHI BEWA *v.* KESHRAM KUCH . 2 B. L. R., Ap., 23: 11 W. R., 93

(*q*) PROFITS OF LAND.

157. ———— **Suit to recover a certain sum on account of a share in property**—*Civil Procedure Code (1882), s. 586—Prayer for account—Question of title.*—Plaintiffs sued to recover, on account of their share in the produce of certain dhara and khoti properties, R339-14-2, or any other sum which might be found due to them on taking account from the defendant, who was the managing khot. The defendant denied the plaintiffs' right to the produce of some of the properties. The first Court and the Court of appeal found that the amount due to plaintiffs was R72-14-11. On second appeal,—*Held* that the suit was a Small Cause Court suit, and no second appeal lay. The mere fact of a question of title arising does not prevent a suit being cognizable by a Court of Small Causes. By merely asking, in the alternative, for an account of the profits, a suit cognizable by a Small Cause Court cannot be converted into one of a different nature. NARAYAN BHASKER *v.* BALAJI BAPUJI

[I. L. R., 21 Bom., 248

(*r*) RENT.

158. ———— **Suit for arrears of rent**—*Act XXIII of 1861, s. 27.*—In suits for arrears of rents of land, when the claim is under R500, a special appeal lies to the High Court, such claims not being generally cognizable by Courts of Small Causes. RAMCHANDRA RAGHUNATH *v.* ABAJI BIN RASTYA

[6 Bom., A. C., 12

159. ———— *Bom. Reg. XVII of 1827, s. 31, cl. 3—Act XXIII of 1861, s. 27.*—The expression "or former year" in Regulation XVII of 1827, s. 31, cl. 3, did not mean the year immediately preceding the current year, but any previous year, and a suit for rent could have been brought before a revenue officer, when Act XI of 1865 was passed, and not before the Small Cause Courts constituted by that Act. A special appeal lay in a suit of this nature. KRISHNARAV RAMCHANDRA *v.* MANAJI BIN SAYAJI . . . . 11 Bom., 106

160. ———— *Suit by an assignee of arrears of rent after they fall due, whether cognizable by the Small Cause Court—Bengal Tenancy Act (VIII of 1885), s. 3, sub-s. 5—Provincial Small Cause Courts Act, sch. II, art. 8.*—*Held* by the Full Bench (BANERJEE, *J.*, dissenting) that a suit brought by an assignee of arrears of rent, after they fell due, for the recovery of the amount due, is a suit for rent, and therefore excepted from the cognizance of the Court of Small Causes, and a second appeal therefore lies in such a suit. SRISH CHUNDER BOSE *v.* NACHIM KAZI

[I. L. R., 27 Calc., 827
4 C. W. N., 357

161. ———— *Suit for arrears of rent brought by assignee of landlord.*—A second appeal lies in a suit brought by an assignee of arrears of rent from the landlord. MOHENDRA NATH KALAMAREE *v.* KOILASH CHANDRA DOGRA

[4 C. W. N., 605

162. ———— **Suit for zamindari cess**—*Suit for payment for use of land—Act XXIII of 1861, s. 27.*—Where the plaintiff claimed a sum of money under the name of a zamindari cess, but in point of fact what was claimed was claimed on account of the use of land,—*Held* that such a suit was a suit of a nature cognizable by a Small Cause Court under s 6, Act XI of 1865, and that a special appeal would not lie. BUCHOO CHOWBEY *v.* GHOORLAIT . . . . . . 4 N. W., 56

163. ———— **Suit for Government assessment and local fund cess**—*Suit for arrears of rent.*—The defendant executed to the plaintiff in 1817 a mulgeni kabuliat (*i.e.*, one kabuliat corresponding to a lease at a fixed rental), agreeing to pay to the plaintiff R150 annually. At the date of the execution of the mulgeni the Government assessment was R56-8-0, but in 1872 it was enhanced to R129-8-0, and a local fund cess of R4-9-0 imposed in addition. The plaintiff sued the defendant to recover from him the enhanced assessment and the cess. On appeal an objection was taken that, the amount claimed by the plaintiff being less than R500, the suit was cognizable by a Court of Small Causes, and that therefore there was no second appeal. *Held* that the suit might be regarded as one for arrears of rent at an increased rate, and, as such, was not cognizable by a Court of Small Causes. BABSHETTI *v.* VENKATRAMANA . . . . I. L. R., 3 Bom., 154

164. ———— **Suits for rent**—*Civil Procedure Code (1882), s 586—Provincial Small Cause Courts Act (IX of 1887), s. 15, sch II, art. 8—"Suits of the nature cognizable in Courts of Small Causes."*—A suit for the recovery of rent other than house-rent does not become a suit of the nature cognizable in Courts of Small Causes within the meaning of s. 586 of the Code of Civil Procedure because a Judge of a Court of Small Causes has been invested by the

SPECIAL OR SECOND APPEAL
—*continued*

4 SMALL CAUSE COURT SUITS—*continued*

Local Government with authority to exercise jurisdic
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suit does not exceed R500 VEDACHALA MUDALI *v* BAMASAMI RAJA I. L. R., 22 Mad., 229

165 ——— *Civil Procedure Code 1882 s 586— Suit of the nature cognizable in Courts of Small Causes' —Suit for rent other than house rent—Second appeal* —A suit for the recovery of rent other than house rent is a suit of the nature cognizable in Courts of Small Causes within the meaning of s 586 of the Code of Civil Procedure and no second appeal lies from a decision therein when the amount or value of the subject matter of the original suit does not exceed five hundred rupees So *held* (SUBRAHMANIA AYYAR J dissenting) *Vedachala Mudali* v *Ramasami Raja I L R 22 Mad 229* overruled SOUNDARAM AYYAR *v* SENNIA NAICKAN I. L. R., 23 Mad., 547

the suit RANGO ROY *alias* RUNG LAL ROY *v* HOLLOWAY I L R, 26 Calc 842
[4 C W N, 65

167 ——— *Suit by land*

rent or ...
a suit by a landlord against a tenant for a certain sum of money payable by him out of the rent to a third person under assignment is one for rent and not for damages and a second appeal lies therefore in such a case. *Rutnessur Biswas* v *Hurish Chunder Bose I L R., 11 Calc 221* referred to *Mohabut Ali* v *Mahomed Faizullah 1 C W N 455* BASANTA KUMARI DEBYA *v* ASHUTOSH CHUCKERBUTTY I L R. 27 Calc, 67
[4 C W N, 3

(s) SPECIFIC PERFORMANCE

168 ——— Suit for specific performance of contract —A suit (valued at R500) for specific performance of a contract is not cognizable by a Small Cause Court Consequently no special appeal will lie in such a case NILKANTH SURMAH *v* BISHEN BASHEE 6 W R., 322

SPECIAL OR SECOND APPEAL
—*continued*

4 SMALL CAUSE COURT SUITS—*continued*

(t) SURETY

169 ——— Suit to establish surety's liability for rent—*Necessity to prove non payment by principal* —A suit to establish a surety's ... *from* a ... by the ... cogni... ...ly a special appeal was not barred in such a case by s 27, Act XXIII of 1861 MAHATAB CHUND BAHADOOR *v* BROJONATH MITTER 8 W R, 111

(u) TAX

170 ——— Suit for arrears of chowkidari tax payable by patnidar under patni settlement—*Rent—Beng l Tenancy Act (VIII of 1885) s 3 (5)—Civil Procedure Code (1882), s 586* —In a suit for arrears of chowkidari tax payable by the patnidar under the patni settlement the Court found that it was not an illegal cess and could be legally recovered *Held* (upon the objection of the respondents that, the suit being one of the nature cognizable by a Small Cause Court and valued at less than R500 no second appeal would lie under s 586 of the Code of Civil Procedure) ... of the

periodica...
the amount agreed to be paid was lawfully payable it came within the definition of 'rent' in the Bengal Tenancy Act and therefore a second appeal would lie *Dheraj Mahtab Chund Bahadoor* v *Radha Benode Chowdhry 8 W R 517 Erskine* v *Trilochun Chatterjee 9 W R 518 Watson & Co* v *Sreekristo Bhumic I L R 21 Calc 1 2 Rutnesser Biswas* v *Hurish Chunder Bose I L R 11 Calc 221* referred to ASSANULLA KHAN BAHADUR *v* TIRTHABASHINI
[I L R, 22 Calc, 680

(v) TITLE QUESTION OF

171 ——— Issues affecting proprietary rights—*Act XXIII of 1861 s 27* The de-

[4 W R, 60

See KISTO COOMAR CHOWDHRY *v* ANUNDMOYEE CHOWDHRAIN 6 W R., Mis, 128

172. ——— Question of title incidentally raised —When a suit is of a nature cognizable by a Small Cause Court, there is no right of special

SPECIAL OR SECOND APPEAL —*continued.*

4. SMALL CAUSE COURT SUITS—*continued.*

appeal, although a question of title is incidentally raised, the finding of the Small Cause Court not being conclusive and only for the purpose of that suit. SUNKUR LALL PATTUCK GYAWAL *v.* RAM KALEE DHAMIN . . . . 18 W. R., 104

173. ———— Question of title raised and tried—*Act XXIII of 1861, s. 27.*—No special appeal lies to the High Court in a suit cognizable by the Small Cause Court, although a question of title to immoveable property has been raised and tried in the Court below. MOHESH MAHTO *v.* PIRU [I. L. R., 2 Calc., 470: 1 C. L. R., 33

174. ———— Failure of Appellate Court to decide necessary question of title—*Act XXIII of 1861, s. 27.*—Where a question of title arises in a suit of a nature triable by a Small Cause Court, which must be determined before plaintiff can get a decree, and the lower Appellate Court fails to determine it, a special appeal is admissible. *Raghu Ram Biswas* v. *Ram Chandra Dobay, B. L. R., Sup. Vol., 34: W. R., F. B., 127,* and *Nanda Kumar Banerjee* v. *Ishan Chandra Banerjee, 1 B. L. R., A. C., 91: 10 W. R., 130,* distinguished. PACHOO RAREE *v.* GOOROO CHURN DASS [15 W. R., 556

175. ———— Where, in a suit cognizable by a Court of Small Causes, in order to determine the question at issue between the parties, it was necessary for the Court of appeal in the first instance to determine a question of title to land (which had been raised by the Munsif),—*Held* that a special appeal lay to the High Court, though the Court below had omitted to determine such question of title. KISANDRAM VALAD HIRA CHAND *v.* JETHIRAM VALAD MAGNIRAM . 5 Bom., A. C., 57

176. ———— Question of title decided by Appellate Court.—Where a suit appears from the plaint to be one of a nature cognizable in a Court of Small Causes, but a question of title has been gone into and decided by the District Court in appeal, a special appeal will lie. DIKSHIT *v.* DIKSHIT . . . . . . 2 Bom., 4

177. ———— Suit for damages involving question of title.—A suit for damages for an amount not exceeding R500 is within the competency of a Small Cause Court to decide, notwithstanding that it involves an inquiry into a question of right. No special appeal lies in such a case. LUCKHEE DEBIA CHOWDHRAIN *v.* MALICK [W. R., 1864, 237

KHANDU VALAD KERU *v.* TATIA VALAD VITHUBA [8 Bom., A. C., 23

178. ———— Suit which may involve question of title—*Suit for damages for detention of materials of house—Act XXIII of 1861, s. 27.* —A suit for damages for detention of materials of a house involves no question of title. Such a suit is cognizable by a Small Cause Court, if under R500, and a special appeal was barred by s. 27, Act XXIII of 1861. KISHUB CHUNDER SHAHA *v.* BHOMMO MOYEE DABEA . . . . 1 W. R., 35

179. ———— Suit involving question of title—*Suit for damages.*—A special appeal was held not to lie in a case for damages for value of crops misappropriated under R500 cognizable by a Small Cause Court, notwithstanding that the case involved a question of title. HEDAETOLLAH *v.* KARLOO [7 W. R., 73

RAM DYAL GANGOOLY *v.* HURO SOONDUREE DOSSIA . . . . 10 W. R., 272

180. ———— *Suit for price of trees cut down and removed—Damages—Act XXIII of 1861, s. 27.*—A suit for the price of trees cut down and removed is not the less a suit for damages, because the Court, in order to determine whether the plaintiff is entitled as damages to the value of his trees, has to go into evidence as to whether they belong to the plaintiff or not. Such a suit is cognizable by a Court of Small Causes, and no special appeal will lie. SHIB DEEN TEWARY *v.* BUKSHEE RAM PROTAB SINGH . W. R., 1864, Mis., 3

181. ———— *Act XXIII of 1861, s. 27—Claim by zamindar to wrecked property—Salvage.*—A quantity of rice having been recovered from the wreck of a boat, a portion was left on the river bank by the owner for the remuneration of the salvors, including some left as "huk zamindari," which the owners of a neighbouring jote carried away. In a suit brought by the former against the jotedar for the value of the portion last mentioned, the Court of first instance went into the question of the custom entitling to property so saved. *Held* that this question was only incidentally raised for the purposes of the suit, which was simply one for the value of moveable or personal property and cognizable by a Court of Small Causes, and, the value being less than R500, a special appeal did not lie. GRANT *v.* MODHOO SOODUN SINGH [10 W. R., 79

182. ———— Suit for arrears of malikana allowance—*Act XI of 1865, s. 6.*—*S* sold a share in immoveable property to *M* by a registered dead of sale, which contained the following provision: "The said vendee is at liberty either to retain possession himself or to sell it to some one else; and he is to pay R25 of the Queen's coin to me annually (as malikana), which he had agreed to pay." *M* mortgaged the property to *B*, who obtained possession, and, after the mortgage, the annual payments provided for by the deed of sale ceased. The representatives of the vendor sued *M* and *B* to recover arrears of malikana, the amount sued for being less than R500. *Held,* upon a preliminary objection made with reference to s. 586 of the Civil Procedure Code, that the intention of the Legislature, as expressed in s. 6 of the Mofussil Small Cause Courts Act (XI of 1865), was that suits directly and immediately involving questions of title to immoveable property should not be cognizable by the Small

SPECIAL OR SECOND APPEAL —*continued*

4 SMALL CAUSE COURT SUITS—*concluded*

Cause Courts that in the present suit such a question w ... s 586 ... appeal ... *Abdoo* ... v *Cha* ... referred to *Pestonji Be onji* v *Abdool Rahiman* I L R., 5 Bom 463 *Qutub Husain* v *Abul Husain* I L R 4 All 134 and *Kadaressur Mookerjea* v *Gooroo Churn Mookerjee* 2 C L R, 388 distinguished. CHURAMAN v BALLI

[I. L. R., 9 All, 591

(w) TRESPASS

183 ——— Suit for damages for trespass—*Suit cognizable by Small Cause Court* —In a suit for damages for trespass laid at a sum under R100 a special appeal will lie to the High Court if the title to the land trespassed upon has been raised in the Courts below LUKHYNARAIN CHUTTOPADHYA v GORACHAND GOSSAMY

[I. L. R, 9 Calc, 116 12 C. L. R, 89

5 GROUNDS OF APPEAL

(a) FORM OF

184 ——— Requisites for grounds—*Clearness and distinctness* The grounds of special appeal must not be vague and indistinct conveying no information to the respondent what the point of law is that he has to meet NAND KISHOR DAS v RAM KALP ROY

[8 B L R, Ap, 49 15 W R, 8

185 ——— Grounds of second appeal —*Civil Procedure Code (Act XIV of 1882) ss 584 585* —The grounds upon which a second appeal lies to the High Court are those set out in s 584 of the Civil Procedure Code and s 585 enacts that no second appeal shall lie except on the grounds mentioned in s 584 The provisions of those sections should be strictly adhered to *Anangamanjari Chowdhrani* v *Tripura Sundari Chowdhrani* I L R 14 Calc 740 L R 14 I A 101 *Pertap Chunder Ghose* v *Mohendra Nath Purkait* I L R 17 Calc 291 L R 16 I A 233 *Durga Chowdhrani* v *Jewahir Singh Chowdhri* I L R 18 Calc, 23 L R 17 I A 122 and *Ram Ratan Sukal* v *Nandu* I L R 19 Calc 249 L R 19 I A 1 referred to KAMESHWAR PERSHAD v AMANUTULLA I. L R, 26 Calc, 53

[2 C W N, 649

(b) QUESTIONS OF FACT

186 ——— Grounds of second appeal —*Civil Procedure Code s 584* —Under the Code no second appeal will lie except on the grounds specified in s 584 There is no jurisdiction to entertain a second appeal on the ground of an erroneous finding of fact, however gross or inexcusable the error

SPECIAL OR SECOND APPEAL —*continued*

5 GROUNDS OF APPEAL—*continued*

may s ... in the Court had b ... support of the finding *Anangamanjari Chowdhrani* v *Tripura Sundari Choudhrani* L R 14 I A 101 I L R 14 Calc 740 and *Pertab Chunder Ghose* v *Mohendra Purkait* L R 16 I A 233 I L R 17 Calc 291 referred to and followed *Futehma Begum* v *Mohamed Ausur*, I L R 9 Calc, 309 and *Nivath Singh* v *Bhikki Singh*, I L R 7 All 649 overruled DURGA CHOWDHRANI v JEWAHIR SINGH CHOWDHRI

[I L R, 18 Calc, 23
L R, 17 I A, 122

187 ——— Doubtful findings of fact—*Consideration of evidence* —No Court of second appeal can entertain an appeal upon any question as to the soundness of findings of fact by the Court of first appeal and if there is evidence to be considered the decision of that Court however unsatisfactory it might be if examined must stand final RAMRATAN SUKAL v NANDU

[I L R, 19 Calc, 249
L R, 19 I A, 1

alone can pass a decision and on which the High Court cannot interfere HUREEHUR MOOKERJEE v JUDOONATH GHOSE 10 W R, 153

ALI v GOPAL DASS 13 W R., 420

189 ——— Question of damages—*Discretion of Judge* —A Judge has a discretion with respect to the amount of the damages which will not ordinarily be interfered with on special appeal TEEKARAM KYBUTT v RAJKISHEN ROY Marsh., 495

AHMEDOOLLA v HUR CHURN PANDAH

[2 W R, 236

190 ——— Question of amount of damages—*Difference of opinion on evidence between lower Courts* —In a suit for damages on account of false charge and consequent arrest, in which the Court of first instance found that there were probable and reasonable grounds for bringing the charge and the lower Appellate Court took a different view of the evidence it was held that the difference of view was not a subject for special appeal The amount of damages to be awarded is a question for a jury to decide and one with which the High Court cannot interfere in special appeal BANEE MADHUB CHATTERJEE v BHOLANATH BANERJEE HEERA CHAND BANERJEE v BANEE MADHUB CHATTERJEE . 10 W R., 164

191. ——— Question of amount of damages—*Award of damages under Act X of 1859 s 10* —An award of damages by a lower Appellate Court under s 10 Act X of 1859,

though excessive, if it is within the legal limit, cannot be interfered with in special appeal as an error of law. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . 13 W. R., 22

Affirmed on review . . . 13 W. R., 391

192. ——— *Refusal to award damages—Beng. Act VI of 1863, s. 2—Discretion of Court.*—The refusal of a Court to award damages under s. 2, Bengal Act VI of 1862, is not a ground for special appeal, it being a matter of discretion to award them or not. DHEERAJ MAHATAB CHAND *v.* DEBENDER NATH THAKOOR [W. R., 1864, Act X, 68

GOPAL LAL THAKOOR *v.* MAHOMED KADIR [W. R., 1864, Act X, 73

193. ——— *Question of law—Sufficiency of evidence.*—It is a question of law for the Court to decide on second appeal whether there is evidence before the Court, on which a Court could properly arrive at any given conclusion of fact. BIDHUMUKHI DABEA CHOWDHRAIN *v.* KEFYUTULLAH . . . . I. L. R., 12 Calc., 93

194. ——— *Jurisdiction, Question of.*—A special appeal will not lie upon a question of jurisdiction depending upon a question of fact, unless the fact has been determined by the lower Court or is admitted by the parties. *Quære*—Whether, if the fact appears, a special appeal will lie unless the error in procedure has affected the merits. LUTEEFOONNISSA BEEBEE *v.* POOLIN BEHARY SEIN . W. R., F. B., 31 : 1 Ind. Jur., O. S., 10 [1 Hay, 242

S. C. POOLIN BEHARY SEIN *v.* LUTEEFOONISSA BEEBEE . . . . . . Marsh., 107

COURT OF WARDS *v.* ROOP MOONJUREE KOOER [25 W. R., 260

195. ——— *Question of what passes at sale in execution of decree—Mixed question of law and fact.*—The question what is actually bargained and paid for at an execution sale is a mixed question of law and fact, and the High Court on second appeal is not bound by the finding of the Court of first appeal with regard to it. GNANAMMAL *v.* MUTHUSAMI . I. L. R., 13 Mad., 47

196. ——— *Existence of legal necessity.*—Where both the lower Courts found that there was no necessity for a widow to borrow money, the High Court refused in special appeal to consider it other than a question of fact, and held they could not interfere with the finding in special appeal. INDER CHUNDER BADOO *v.* HURNAUTH CHOWDHRY . . . . . 1 Hay, 257

197. ——— *Question of law—Onus probandi.*—Where each of the parties has gone into evidence upon the issues raised in the lower Courts, no question as to whether the onus lies on the one or on the other can arise in special appeal. HUREE MOHUN MOJOOMDAR *v.* ASGUR BEHAREE [23 W. R., 324

Reversing the decision in ASGUR BEPAREE *v.* HURREE MOHUN MOJOOMDAR . 23 W. R., 56

198. ——— *Proceeding to enforce decree—Act XIV of 1859, s. 20.*—The question whether the action of the judgment creditor taken in execution of his decree was a proceeding taken to enforce the decree within the meaning of s. 20, Act XIV of 1859, was a question of fact for the decision of the Courts below, and not one of law on which to bring a special appeal to the High Court. IRSHAD ALI *v.* RADHU SHAH [13 B. L. R., Ap., 1 : 21 W. R., 188

199. ——— *Order finding proceedings to enforce decree not bonâ fide—Act XIV of 1859, s. 20.*—The question as to whether proceedings which had been taken to execute a decree had been taken *bonâ fide* to keep alive such decree was a question of fact, and no special appeal lay from an order finding that the proceedings taken were *bonâ fide.* BHUBAN MOHUN CHATTOPADHYA *v.* SAUDAMINI DEBI . . . 5 B. L. R., Ap., 59

200. ——— *Service of notices.*—Where a Judge found no evidence that the notices in certain execution-proceedings were not caused to be properly served, and that those notices were not made in good faith, the finding was held to be a finding of fact which could not be disturbed in special appeal. ABDOOL AZEEZ *v.* SHUMSUNNISSA [11 W. R., 263

201. ——— *Service of notice of enhancement.*—A decision that notice of enhancement was duly served cannot be interfered with in special appeal. TARA PROSUNNO MOJOOMDAR *v.* BISHO NATH SIRCAR . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R., 432

202. ——— *Right of way.*—In suits to enforce a right of way, the question whether the plaintiff has a right of way or not is a question of fact to be determined by the evidence he produces of user. Where, on the evidence, the Judge found the plaintiff had not a right of way,—*Held* there was no error of law which gave the plaintiff a right to a special appeal. MAHOMED ALI *v.* JUGAL RAM CHANDRA [5 B. L. R., Ap., 84 : 14 W. R., 124

203. ——— *Finding as to user.*—A finding of a lower Appellate Court as to a right of user being proved cannot be interfered with on special appeal, even though not very distinct as to the precise period of enjoyment. WUZEEROODDEEN *v.* SHEOBUND LALL . . . 11 W. R., 285

204. ——— *Civil Procedure Code, s. 584—Powers of High Court on second appeal.*—On second appeal by a landlord against a decree of a District Judge, who stated in his judgment that, "though the tenant admitted the execution of the muchalka, it was not shown that he dispensed

SPECIAL OR SECOND APPEAL —*continued*

5 GROUNDS OF APPEAL—*continued.*

with the pottah," no objection was taken in the memorandum of appeal that the muchalka, which contained a statement that no pottah was necessary, had been neglected or misconstrued The High Court ordered that the Judge be asked to take the postscript into his consideration and submit a revised finding NARAYANA *v* MUNI [I. L. R., 10 Mad, 363

206. ———— *Consent of parties* —The High Court will not, even with consent of parties pronounce a decree on the facts in a special appeal KADAMBINEE DOSSEE *v* DOORGA CHURN DUTT . . . . Marsh., 4

S C. DOORGA CHURN DUTT *v* KADUMBINEE DOSSEE . . . 1 Hay, 25

Court HAMEER MAHOMED CHOWDRY *v* FOOL MAHOMED CHOWDRY 16 W R., 311

WOOMA MOYEE BURMONYA *v* KUNUCK CHUNDER MOOKERJEE . 17 W. R., 418

Even though it is not an inference, the High Court itself would have drawn, provided the Judge was at liberty to draw it MAHOMED MANOO BHOOYAH *v* MAHOMED ASANOOLLAH CHOWDHRY [17 W. R., 349

KALEE DOSS ACHARJEE *v*. KHETTRO PAL SINGH ROY . . . . . . 17 W R., 472

208 ———— *Practice — Interference with finding of facts on second appeal* — As a general rule, the High Court will not interfere with the finding of facts by the lower Appellate Court on second appeal, save on some very special ground, for instance, where such a finding of facts as appears to be necessary under the peculiar circumstances of the case has not been satisfactorily arrived at. GOLUCK NATH *alias* RAKHAL DAS CHUTTOPADHYA *v* KIRTI CHUNDER HALDAR [I. L R, 16 Calc, 645

209 ———— *Ground for setting aside decision* — If the reasons in a judgment are such as can be rightly given, and the inferences such as can be legally drawn, it cannot be set aside in special appeal, even if the High Court cannot agree with or support all the reasons given RUMMEEZOODDEEN BHOOYAN *v* JOYMALA . 15 W. R, 303

210 ———— *Finding of fact, unsupported by reasons* —The High Court is not bound, in second appeal, by a finding of fact of a lower Appellate Court, when such finding is not supported by any reason PURSHOTAM SAKHARAM *v* DURGOJI TUKARAM I. L. R, 14 Bom, 452

211. ———— *Finding of the Court of first instance without reasons given where contrary conclusion has been come to by the District Judge* —The District Judge having expressed an opinion and recorded a finding without discussing the several grounds on which the Subordinate Judge came to a contrary conclusion —*Held* that the finding of the District Judge ought not to be accepted MADHAV SHANBHOG *v* VENKATASH MANJAYA . . . I L. R, 16 Bom, 540

212. ———— *Finding of fact unsupported by reasons—Defect in judgment of lower Appellate Court* —Where no reasons are given by a lower Appellate Court for the conclusions arrived at, such conclusions cannot be accepted as legal find
Kamat, I
Gopal
referred to. NINGAPPA *v* SHIVAPPA [I. L R., 19 Bom, 323

213 ———— *Decision on fact, though probably erroneous* —In special appeal a lower Appellate Court's findings upon a question of fact were accepted as final, although it seemed to the High Court at least doubtful whether the judgment of the first Court was not the right one and it was not unlikely, if they had the power of going into the matter, that they might have come to a different conclusion from the lower Appellate Court LOOTEE DHUR ATTO *v*. PROSUNNO MOYEE DOSSEE [20 W. R., 267

214 ———— *Error in law* —
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based are erroneous in law, as where evidence is credited or disbelieved on unreasonable grounds. JUGGURNATH DEB *v* MAHOMED MOKEEM [17 W. R, 161

SAGE *v* MACKAY & Co . 2 Hay, 463

BEHAREE LALL NAEK *v* SREERAM ROY [20 W. R, 259

See KRISTO GOBIND KUR *v*. GUNGA PERSHAD SURMA . . . 23 W. R., 266

PUTSAHEE KOOER *v* SHEO PERSHAD RAM OOPADHYA . . . . 24 W. R, 61

CHAND MONEE DOSSEE *v*. OBHOY CHURN MAL [24 W R., 289

HUNSA KOOER *v*. SHEO GOBIND RAOOT [24 W. R., 431

GOBINDO CHUNDER MOULICK *v* MUDHCOSUDUN MOULICK . . . 25 W. R, 550

DHOOKUH BAHADOOR SINGH *v*. PRIAG SINGH [17 W. R, 314

KEWAL KANDOO *v*. OMRAO SINGH [25 W. R., 166

SPECIAL OR SECOND APPEAL—*continued.*

5. GROUNDS OF APPEAL—*continued.*

215. ——————— *Error in law—Partnership.*—Where a Subordinate Judge held, from the fact of one person carrying on a business firm and appearing to the world to be the only person carrying it on, that there could be no other person in partnership with him, he was considered to have committed an error which materially affected his decision on the merits, and was a good ground for special appeal. SHOOBUL CHUNDER KULLEAH *v.* KOYLASH CHUNDER MAL . . 14 W. R., 23

216. ——————— *Finding on speculative reasoning.*—A finding of fact arrived at upon reasons purely speculative amounts to a mistrial which can be set aside by the High Court in special appeal. MAHOMED AIZADDI SHAHA *v.* SHAFFI MULLA . . . . 8 B. L. R, 26

217. ——————— *Improper assumption of, and inference from, facts.*—A finding of a fact by the lower Appellate Court was set aside on special appeal, and the case was remanded on the ground that the Judge assumed a state of things in favour of the defendant which the defendant had not urged, and which was contradictory to his case, and because the finding of the Judge was opposed to a proper inference which arose from such facts. SURBESWAR GHOSE *v.* CHOTO ARIZOLLAH MANDAL [8 B. L. R., Ap., 78 : 17 W. R., 213

218. ——————— *Judgment founded on errors of fact.*—The High Court reversed on special appeal a judgment which was founded on many errors of fact, and sent it back for a re-trial. POORNO CHUNDER CHATTERJEE *v.* CHUNDER COOMAR ROY . . . . . 24 W. R., 171

219. ——————— *Omission to consider important portions of the evidence—Finding based on statements, not on evidence.*—The lower Court, in its judgment, having omitted to make any mention of certain important documents or their bearing on the terms of a tenancy which were in question,—*Held* that, the lower Court having presumably omitted to consider important portions of the evidence, the findings arrived at by it ought not to be accepted. *Held* also that the finding of the lower Court as to the plaintiffs' claim being barred by limitation, being based on statements without referring to any evidence to establish them, could not be accepted. Case sent back for reconsideration and fresh decision. APPA KALGA NAIK *v.* MALLU . . I. L. R., 16 Bom., 477

220. ——————— *Decision of Judge not based on evidence given in the case—Finding of fact when binding in second appeal*—In a suit for ejectment for non-payment of enhanced rent the defendants pleaded (1) that they were permanent tenants; (2) that the plaintiff had no power to enhance; (3) that the enhancement by the plaintiff was unreasonable. The lower Courts held that the defendants were permanent tenants, but were bound to pay a reasonable rent. Their decision was not based on evidence given in the case, but on what was termed a "well-known distinction between the sheri or private lands of an inamdar and the khata or raiyatwar lands held by recognized tenants." The exercise of certain rights of transfer or inheritance, etc., were regarded as evidence of fixity of tenure at a reasonable rent. On second appeal by the plaintiff to the High Court it was argued that, the District Court having found, as a fact, that the defendants were permanent tenants bound to pay a reasonable rent, the High Court in second appeal was bound by that finding. *Held* that the case should be remanded for proper enquiry. No doubt, if the appeal in the District Court were conducted as if all the facts recorded by the Subordinate Judge were admitted, the plaintiff could not in second appeal question those facts. But it did not appear that it was admitted that the distinction drawn between sheri and khata tenants was correct or that every khata tenant, as such, exercised the rights described by the Subordinate Judge. Under the circumstances, it was clear that the decision of the District Judge was based neither on evidence nor admissions, and was therefore not binding in second appeal. VISHVANATH BHIKAJI *v.* DHONDAPPA [I. L. R., 17 Bom., 475

221. ——————— *Civil Procedure Code (Act XIV of 1882), ss. 584, 585—Findings of fact distinguished from inferences or conclusions of law—Inference of law which the facts found were insufficient to justify.*—It is well settled that a Court of second appeal, for the purpose of considering the weight of the evidence, is not competent, according to ss. 584 and 585 of the Civil Procedure Code, to entertain a question as to the soundness of a finding of fact by the Court below. The first Court's decision as to the effect of the evidence must stand final as to the facts. But the soundness of conclusions may involve matter of law, and may be questioned by a Court of second appeal. A conclusion was drawn by an Appellate Court affirming the judgment of the first Court that the defendant had accepted as a binding obligation upon him a mortgage executed by his mother, with whom he was a sharer by inheritance in the property charged. A higher Appellate Court, on a second appeal, decided that these conclusions were not warranted by the facts found, and reversed that judgment. *Held* that the third Court had not exceeded its powers under the above sections by reversing the decision of the Court below. The expression "specified" used in cl. (*a*) of s. 584, first introduced into the Code by the Act of 1877, means "specified in the memorandum or grounds of appeal." *Durga Chowdhrani* v. *Jewahir Singh Chowdhri, I. L. R., 18 Calc., 23 : L. R., 17 I. A., 122,* followed. RAMGOPAL *v.* SHAMSKHATON [I. L. R., 20 Calc., 93 : L. R., 19 I. A., 228

222. ——————— *Inference drawn from finding of fact.*—It is open to the Court in second appeal to question the soundness of an inference drawn from a finding of fact. *Ram Gopal*

SPECIAL OR SECOND APPEAL —*continued*

5 GROUNDS OF APPEAL—*continued*

v *Shamskhaton I L R 20 Calc 93* referred to KRISHNA KISHORE NEOGI v MAHOMED ALI [3 C W N, 255

223 ———————— *Finding of*

be accepted in second appeal as a legal finding on it GOVIND v VITHAL I L R, 20 Bom, 753

224 ———————— *Finding on the existence of custom or usage mainly based on irrelevant matters—Evidence Act (I of 1872) s 13—Mistrial—Remand* —In suits by a landlord for

required to prove the usage In second appeal the High Court upon an examination of the evidence relied on by the lower Court of appeal and on reference to s 13 of the Indian Evidence Act (I of 1872) *held* that the finding of that Court on the existence of the usage having been mainly based on irrelevant matters the appeal was not properly tried and the case must be remanded for re trial *Womes Chunder Chatterjee* v *Chundee Churn Roy Chowdhry I L R 7 Calc 293* referred to PALAKDHARI RAI v MANNERS [I L R, 23 Calc, 179

225 ———————— *Proof of custom—Misconception as to mode of proof*—If a decree appealed against is based on wrong views of the law of evidence or on a misconception of the canons which the Privy Council and the High Court have defined as to how a special custom should be proved the High Court will interfere in second appeal. DESAI RANCHODDAS VITHALDAS v RAWAL NATHUBHAI KESABHAI I L R, 21 Bom, 110

In another case the Court on second appeal did not consider it open (where the lower Court had found the existence of a custom) to arrive at an independent finding as to whether the evidence established the existence of such custom BAI SHRINIBAI v KHARSHEDJI NASARVANJI MASALA VALA . . I L R., 22 Bom, 430

226 ———————— *Re and to the Appellate Court—Additional evidence in Appellate Court—Finding of fact upon evidence taken after remand—Procedure in the second Court of appeal—Civil Procedure Code (1882) ss 568 584 585 and 587* —In a second appeal the High Court set aside the decrees of the lower Courts on the ground that certain issues raised in the suit were not considered by those Courts and remanded the case to the lower Appellate Court for a proper decision of the case. The lower Appellate Court took evidence on the issues not tried before and came to findings of fact on that evidence *Held* that the lower Appellate Court tried the case not as an original case but as an appeal and acting under the powers given to it took fresh evidence *Held* that on second appeal the High Court is precluded by the Code of Civil Procedure from going into facts and that restriction of power is not confined only to cases where evidence is taken in the first Court *Gopal Singh* v *Jhakri Rai I L R 12 Calc 37* followed *Balkishan* v *Jasoda Kuar I L R 7 All 765* referred to. *Hinde* v *Brayan I L R, 7 Mad 52* not followed BENI PERSHAD KUARI v NAND LAL SAHU I L R., 24 Calc., 98

227 ———————— *Enhanced rent on irrigated land—Implied contract* —A zamindar tendered to raiyats on his estate pottahs providing (*inter alia*) for the payment of rent in which the land assessment was consolidated with a water cess in respect of certain land irrigated under the Kistna anicut This had not been sanctioned by the Collector under the Madras Rent Recovery Act s 11 but it was found that it had been paid by the raiyats for many years The Court of first appeal held on this finding that there were implied contracts on the part of the raiyats to pay it. *Held* that the finding as to the existence of an implied contract to pay the enhanced rent was a finding of fact and must therefore be accepted on second appeal SIRI PARAPU RAMANNA v MALLIKARJUNA PRASADA NAYUDU I L R, 17 Mad, 43

228 ———————— *Civil Procedure Code (1882), ss 584 and 585—Inference of law which the facts found are insufficient to justify* —Where the lower Appellate Court arrives at a conclusion which is an inference based upon an erroneous view of law the judgment is open to question in second appeal *Lachmeswar Singh* v *Manwar Hossein I L R 19 Calc, 253 L R 19 I A 48 Ram Gopal* v *Shamskhaton I L R 20 Cal 93 L R 19 I A 228* referred to ISHAN CHUNDER DAS SARKAR v BISHU SIRDAR [I L R, 24 Calc, 825
3 C W N, 665

(c) EVIDENCE MODE OF DEALING WITH.

he deals improperly with the presumptions which the law would raise he commits error in law which the High Court can correct in special appeal When a Judge decides without legal evidence he commits an error in law SURNOMOYE v LUCHMEEPUT DOOGUR 9 W R 338

230 ———————— *Assumption made without evidence* —Where an assumption is made by the Court without any evidence that is an

SPECIAL OR SECOND APPEAL—*continued.*

5. GROUNDS OF APPEAL—*continued.*

error of law warranting a special appeal. HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . . 23 W. R., 519

231 ———— *Drawing unwarranted conclusions.*—Special appeal allowed, and case remanded for re-trial, where the lower Appellate Court had drawn conclusions from the evidence not warranted by law or reason, and had failed to try a material issue in the case. MAHARAM SHEIKH *v.* NAKOWRI DAS MAHALDAR 7 B. L. R., Ap., 17

232. ———— *Civil Procedure Code, s. 584—Substantial error in a first Appellate Court's finding without any evidence to support it.*—The Court of first instance dismissed the suit upon the ground that the right which it was brought to establish had been taken away by a compromise entered into by a guardian on behalf of an infant party to former proceedings. This was reversed by the first Appellate Court, which decreed the claim, holding it unaffected by the compromise, on the ground that the latter was, in fact, contrary to the interests of the infant. The High Court, on a second appeal, set aside this finding, there having been no proof that the compromise was to the infant's detriment, and affirmed the decree of the first Court. *Held* that the High Court rightly reversed the decree of the first Appellate Court; the above finding, without any evidence to support it, being a substantial error in the proceedings, and good ground of second appeal within the meaning of s. 584, sub-s. (*c*), of the Civil Procedure Code. HEMANTA KUMARI DEBI *v.* BROJENDRO KISHORE ROY CHOWDHRY . . . I. L. R., 17 Calc., 875 [L. R., 17 I. A., 65

233. ———— *Error in legal conclusion or inference from evidence.*—In a suit to enforce a right to share in the profits of a ferry, the defendant set up an exclusive title and adverse possession. *Held* that, the decision that the defendant's possession had been adverse having been an inference from a fact in the Courts below, the correctness of this as a legal conclusion to be drawn or not was a question open to second appeal, and the High Court was not precluded from deciding to the contrary. LACHMESWAR SINGH *v.* MANWAR HOSSEIN [I. L. R., 19 Calc., 253 L. R., 19 I. A., 48

234. ———— *Omission of Appellate Court to consider presumption of facts material to case.*—When an Appellate Court appears not to have taken into its consideration a presumption of facts arising out of the circumstances in evidence, and materially affecting the decision of the case, that is such an omission and defect (ss. 354 and 372, Act VIII of 1859) as the High Court will remedy on special appeal by directing an issue. NILATATCHI *v.* VENKATACHALA MUDALI [1 Mad., 131

S. C. ANONYMOUS . 2 Ind. Jur., O. S., 13

235. ———— *Omission to draw inference.*—An omission of the Judge to draw an inference from the conduct of parties relied on as evidence is not an error of law with which the High Court will interfere in special appeal. SAVI *v.* PUNCHANUN . . . . 25 W. R., 503

236. ———— *Documentary evidence—Construction of document or inference to be drawn from its term—Civil Procedure Code, s. 584—Question of law.*—The question of what is the proper inference to be drawn from the terms of a document is a question of law within the meaning of s. 584, Civil Procedure Code, and can be considered in second appeal. CHOOKALINGAM PILLAI *v.* MAYANDI CHETTIAR . . I. L. R., 19 Mad., 485

237. ———— *Omission to consider evidence—Error in decision on the merits.*—Every Judge of a question of fact is bound to take into consideration all the allegations and proofs upon the record bearing upon that question, as well as the material presumptions arising therefrom, and to overlook them is a defect in law. But before such defect can constitute a good and valid ground of special appeal, it must be of such a character that it may have caused an error in the decision of the case on the merits. GUNEE BISWAS *v.* SREEGOPAL PAUL CHOWDHRY . . . . 8 W. R., 395

238. ———— *Decision of lower Court as to credit to be given to particular proofs.*—It is the province of the Court which has to decide issues of fact to determine the amount of credit to which each particular proof offered is entitled; and with the fair exercise of its discretion in this respect by such Court, the High Court, as a Court of special appeal, is not at liberty to interfere. MUTHRA DOSS *v.* MAGH SINGH . 2 N. W., 207

239. ———— *Weight of reasons given for decision.*—No special appeal will lie on a ground relating merely to the weight of the reasons given by the lower Appellate Court for the conclusion arrived at. DOORGA CHURN SETT *v.* SHAMANUND GOSSAIN . . . 12 W. R., 376

Or as to the worth of testimony. MACKENZIE *v.* JOWAHIR MAHTOON . . . 25 W. R., 137

240. ———— *Weight of evidence—Discretion of Court under Act XL of 1858.*—Weight of evidence is not a point on which the High Court can interfere in special appeal, nor will it interfere with the discretion of the Judge in not allowing a person to represent a minor. DHOONDH BAHADOOR SINGH *v.* PRIAG SINGH [17 W. R., 314

241. ———— *Giving credit to evidence.*—Where the lower Appellate Court has dealt with the evidence on both sides, has weighed it, and come to the conclusion that one side ought to be believed, the giving in the course of his observations a bad reason for believing it is not a ground of special appeal. SHEO GOLAM SAHOY *v.* MOHADEO LALL SAHOO . . . . 18 W. R., 110

SPECIAL OR SECOND APPEAL—*continued.*

5 GROUNDS OF APPEAL—*continued*

242 ———— *Difference between lower Courts on questions of evidence* —Where the first Court and the lower Appellate Court differ as to questions of evidence, it is not a ground of special appeal, nor are the parties entitled to argue in special appeal whether the former or the latter is right. TARA PROSUNNO MOZOOMDAR *v* BISHONATH SIRCAR . . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . 22 W. R., 482

243 ———— *Ground for discrediting evidence found not to exist* —Where it

MACKENZIE *v* JOWAHIR MAHTOON [25 W. R., 137

244. ———— *Erroneous dealing with evidence* —Whether or not a lower Appellate Court commits such an error in dealing with a case on the evidence before him as would make his conclusion on the facts bad in law, if he does not treat the evidence otherwise than reasonably, he gives no room for special appeal MOHUR MATOON *v* UMATUM . . . . 18 W. R., 499

was pointed out, where he had committed errors and the case was remanded, that he might pass a fresh decision upon it RAM DAS SAHA *v* MANMAHINI DASI . . 7 B. L. R., Ap., 4

246 ———— *Judgment showing want of consideration of evidence* —A judgment which shows on the face of it want of due consideration of evidence and the introduction of foreign matters into the case may be brought up before the High Court in special appeal, SOORAJ KANT ACHARJE *v* KHOODEE NARAIN MANNA 22 W. R., 9

KOOLDEEPNARAIN SINGH *v* RUMMON SINGH [22 W. R., 278

247 ———— *Civil Procedure Code, 1882, s. 584—Grounds impugning findings of fact* —*Held* by the Full Bench (PETHERAM, *C J*, dissenting) that under s. 584 (*c*) of the Civil Procedure Code it is competent for the High Court to entertain pleas in second appeals which impeach the findings of fact recorded by the lower Appellate Court, on the ground that such findings are conjectural, that they ignore the evidence, and that the

nesses or documentary proof upon capricious or unsustainable grounds, or has stated no intelligible

SPECIAL OR SECOND APPEAL—*continued.*

5 GROUNDS OF APPEAL—*continued.*

reasons for arriving at its findings of fact, the High Court may take notice of all such matters in second appeal *Futtema Begam* v. *Mohamed Ausur*, *I L R*, *9 Calc*, *309*, *Assanullah* v *Hafiz Muhammad Ali*, *I L R*, *10 Calc*, *931* and *Lal Mahomed Bepari* v *Shoila Bewa*, *11 C L R*, *104*, referred to *Per* PETHERAM, *C J* —The High Court is not at liberty in second appeal to look into the evidence in the cause for the purpose of ascertaining whether the lower Courts have found the facts cor-

should be absolutely final By "specified law" in cl (*a*) of s 584 is meant the statute law, and by "usage having the force of law" the common or customary law of the country or community, and the clause is confined to cases in which the lower Appellate Courts have either misconstrued a statute or written document, or have come to a wrong conclusion as to what is the customary law of the country or community with reference to questions at issue between the parties Cl. (*b*) can only refer to mistakes in law, and does not extend the operation of cl. (*a*) The term "procedure" in cl. (*c*) means the practice followed by the Courts in the trial of cases, and cannot be construed as including the mental process by which a Court comes to a conclusion upon a question of fact *Per* MAHMOOD, *J* —That the Legislature, by framing s 574 of the Civil Procedure Code, intended to guard against

jects of second appeal, and a judgment of a Court of first appeal which falls short of due compliance with the various clauses of s 574 is essentially defective, and may properly be made the subject of complaint in second appeal under s. 584 *Ramnarain* v *Bhawnidin*, *Weekly Notes, All*, *1882*, *p. 104*, and *Sheoambar Singh* v *Lallu Singh*, *Weekly Notes, All*, *1882*, *p 158* referred to. The word "procedure" in cl (*c*) of s 584 must be understood in its most generic sense, including all the rules contained in the Civil Procedure Code or any other law regulating the investigation of cases by the Civil Courts When the Court of first appeal, after having entered into the merits of the case, has considered the evidence and adjudicated upon the merits in the manner required by s. 574, the mere circumstance that the conclusions at which the Court has arrived are erroneous or opposed to the weight of evidence will not justify interference in second ap-

arrives at conclusions upon the merits ignoring any steps essential for justifying those conclusions, or

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

where such conclusions are based upon evidence inadmissible by law, or proceed upon an erroneous view of the legal effect of any material part of the evidence, or are arrived at under a misconception either of the rules of evidence or of any other law, such conclusions, though they purport to be distinct findings of fact, would lay the judgment of the lower Appellate Court open to second appeal under cl. (*c*) of s. 584, so long as the error was substantial enough to have possibly affected the justice of the case upon the merits. NIVATH SINGH *v.* BHIKKI SINGH. BHIKKI SINGH *v.* NIVATH SINGH [I. L. R., 7 All., 649

248. ———— *Finding on issue of fact remitted—Civil Procedure Code, 1882, ss. 565, 566, 568.—Held* by the Full Bench (TYRRELL, *J.*, dissenting) that the findings upon issues remanded by the High Court in second appeal cannot be challenged upon the evidence as in first appeals, but objections to these findings must be restricted to the limits within which the original pleas in second appeal are confined. *Nivath Singh* v. *Bhikki Singh I. L. R., 7 All., 649,* referred to. *Per* PETHERAM, *C.J.*, and TYRRELL, *J.*—Ss. 565 and 566 of the Civil Procedure Code are, as far as may be, incorporated in Ch. XLII of the Code relating to second appeals, and when the evidence for disposing of the real issues in the case has been taken and exists on the record, it is the duty of the High Court, on the hearing of a second appeal, to itself fix and determine such issues on the evidence on the record, and not to put the parties to the expense and delay involved by a remand. *Per* STRAIGHT, *J.*—S. 587 of the Civil Procedure Code does not mean that the provisions of Ch. XLI relating to first appeals are to be applied indiscriminately or in their entirety to second appeals, and implies no warrant for the decision by the High Court of questions of fact in any shape or at any stage of a second appeal. *Ramnarain* v. *Bhawanidin, Weekly Notes, All., 1882, p. 104,* and *Sheoambar Singh* v *Lallu Singh, Weekly Notes, All., 1882, p. 158,* referred to. *Per* TYRRELL, *J.*—The jurisdiction of Courts of second appeal in respect of questions of fact is restricted, in so much as the appeal may not be entertained on "grounds" of fact, but under the circumstances of s. 566 of the Code, no less than under the abnormal circumstances contemplated by the ruling of the Full Bench in *Nivath Singh* v. *Bhikki Singh, I. L. R., 7 All., 649,* the Court may take cognizance of omitted issues of fact, and must determine them if there be evidence upon the record sufficient for that purpose. In cases where the Court, still acting under s. 566, has been obliged in the absence of evidence on the record to supplement the defect through the agency of the Court below, its jurisdiction in respect of such evidence does not become limited thereby or by reason only of the circumstance that the evidence is accompanied by a "finding" of the inferior Court,—the term "finding" being used in s. 566 in its restricted sense of an answer to the proposition referred for inquiry, and not of an award of decision of the issue before the Court. BALKISHEN *v.* JASODA KUAR [I. L. R., 7 All., 765

249. ———— *Findings of fact—Procedure of the High Court.*—Where the lower Appellate Court has clearly misapprehended what the evidence before it was, and has thus been led to discard or not give sufficient weight to important evidence, and to give weight to other evidence to which it is not entitled, and has thus been led not into any mere incidental mistake, but totally to misconceive the case, the High Court will interfere in second appeal, though it is not the ordinary course of procedure for it to interfere in such cases with any findings of fact which have been arrived at by the lower Appellate Court. FUTTEHMA BEGUM *v.* MAHOMED AUSUR . . I. L. R., 9 Calc., 309

250. ———— *Question of fact—Findings on evidence.*—The finding of a fact by a lower Appellate Court upon evidence, a portion of which was inadmissible, is not such a finding of fact as cannot be interfered with in special appeal. GURU DAS DEY *v.* SAMBHUNATH CHUCKERBUTTY [3 B. L. R., A. C., 258

251. ———— *Giving undue weight to inadmissible evidence.*—Where the lower Appellate Court gave very great weight to evidence which ought not to have been treated as evidence between the parties, and this error materially affected his judgment throughout, the High Court in special appeal held that there had been a mistrial, and remanded the case for re-consideration. ROHEE LALL *v.* DINDYAL LALL . . . 21 W. R., 257

252. ———— *Error in law —Rejection of evidence.*—There is a material difference between a case in which a Judge has assigned one bad reason for believing or disbelieving a particular piece of evidence, while he has given one or more good reasons for the same belief or disbelief; or a case in which, putting this particular piece of evidence wholly aside, enough remains to support the judgment, and a case in which the essential question, or one of the essential questions to be decided, rests upon the evidence believed or disbelieved regarded as of great value, or considered worthless, for a reason which is unsound and unsustainable. In the latter case an Appellate Court can interfere on special appeal. HURO PROSAD ROY *v.* WOMATARA DEBEE . [I. L. R., 7 Calc., 263: 8 C. L. R., 449

253. ———— *Error in procedure—Finding of fact by lower Court not accepted by High Court where the District Judge, in consequence of a mistake as to a date, was biassed in dealing with the defendant's evidence.*—Where a Judge, under a mistake, thought that a bond, which was really dated 19th November 1885, was dated 8th November 1886, and consequently treated the deposition of the defendant, in which he stated that the bond had been passed by him a fortnight before he signed in the plaintiff's account book the acknowledgment sued on dated the 10th December 1885, as

SPECIAL OR SECOND APPEAL
—continued

5 GROUNDS OF APPEAL—continued

"false," — *Held* that, as the Judge must have been biassed by the strong opinion so formed as to the defendant's untruthfulness in dealing with the rest of the defendant's evidence, there was such a sub stantial error in the procedure as ought to preclude the High Court from accepting the Judge s finding as conclusive upon the point in dispute Decree reversed, and the case sent back for fresh decision on the merits on the evidence as it stood *Hemanta Kumari Debi* v *Brojendro Kishore Roy Chowdry, I L R, 17 Calc, 875 L R 17 I A 69,* referred to VIRBHADRAPPA v MAHANTAPPA
[I L R., 15 Bom, 670

254 ——— *Error in dealing*

of the burden of proof especially in cases in which a title is asserted by a plaintiff who seeks to oust a defendant and that defendant de ies the title and asserts that the plaintiff has no title at all WALI AHMAD KHAN v AJUDHIA KANDU
[I L R, 13 All., 537

255 ——— *Suit for ejectment*

title by the defendant Upon review of the evidence the District Judge held that the plaintiff s title was not proved *Held* that this find ng which was a mixed one of law and fact was a finding with which the High Court could not interfere on second appeal When from the facts found by the lower Court the legal inference to be drawn is certain the High Court in second appeal may correct erroneous conclu sions drawn by the lower Appellate Court Where, however the legal inference to be deduced from facts is doubtful, it is not open to the High Court in second appeal to interfere with the findings of the lower Court A test which often presents itself to an English lawyer is this Would a Judge withdraw the case from a jury on the ground that there was no evidence of the question to be found upon such as adverse possession or title, to go to them? or would he, on the other hand on certain facts being estab lished, direct them to find in a particular manner? In either of these cases it would be open to the High

priety of the finding of the lower Appellate Court

SPECIAL OR SECOND APPEAL
—continued

5 GROUNDS OF APPEAL—continued

Lachmeswar Singh v *Manowar Hossein I L R, 19 Calc, 253 L R 19 I A 48* and *Ram Gopal* v *Shamskhaton, I L R 20 Calc 93 L R, 19 I A 228* referred to RAJARAM v GANESH HARI KABKHANIS
I L R., 21 Bom., 91

256 ——— *Misdirection* —

ground for a second appeal RAMPROSAD DAS v RAJO KOER
5 C L R, 94

DHABUN MOHUNT v SHURUT CHUNDER ROY
[23 W R, 160

ABDUL ROHMAN v SOFY MIKHAYESH SAHEBA
[24 W R, 293

MOHUN SINGH v JUGBUTTY KOOER
[24 W R, 297

258 ——— *Disregard of*

in law HEERA LALL GHOSE v KALEE DASS MOOKERJEE
23 W R, 65

ANUND CHUNDER CHUCKERBUTTY v RUTNESSUR DOSS SEN
25 W. R., 50

evidence at all or which points almost exclusively

below has ostensibly based its judgment on the evidence ROOP NARAINEE KOOER v RESSAL TEWAREE
24 W R, 119

260 ——— *Improper dealing with evidence* —In this case, departing from its general rule in special appeals not to disturb the

to notice facts very much in favour of the defendants, considered itself justified in saying that his

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

case for re-trial. SHIBO SOONDUREE DOSSEE *v.* CHUNDER KANT GHOSE . . . 21 W. R., 217

AMEER BEPAREE *v.* HURREE MOHUN KURMOKAR [23 W. R., 87

261. ———— *Improper and erroneous dealing with evidence—Error in law.*—The investigation of a case upon a portion of the evidence, excluding the other portion under a mistaken impression that it was not legal evidence, but conjecture, is an investigation erroneous in law, and is likely to produce an error in the decision of the case on its merits. The mode in which evidence is to be dealt with discussed. MATHURA PANDEY *v.* RAM RUCHA TEWARI [3 B. L. R., A. C., 108: 11 W. R., 482

262. ———— *Partial consideration of evidence.*—It is a ground for special appeal, if the Appellate Court disregards one side of a case, and turns its attention exclusively to the evidence on the other; but it is no error of law merely to pronounce no objection upon the evidence on the former side. DEO SURUN POORY *v.* MAHOMED ISMAIL . . . . 24 W. R., 300

263. ———— *Ground for setting aside decision on facts.*—The lower Appellate Court has quite as much authority to decide upon facts as the Court of first instance, and the High Court is not at liberty to interfere with verdicts setting aside judgments of the Court of first instance, simply because such judgments are more detailed or even more satisfactory on the evidence. DOIBO CHUNDER ROY *v.* WOOMA MOYEE DEBIA [19 W. R., 321

264. ———— Documentary evidence—*Reasons for rejecting documentary evidence.*—The reasons of a Judge for not giving any weight to documents offered as evidence cannot be questioned in special appeal. MUNEE DUTT SINGH *v.* CAMPBELL [11 W. R., 278

But *see* SUROSUTTY DOSSEE *v.* UMBIKA NUND BISWAS . . . . 24 W. R., 192

265. ———— *Finding as to sufficiency of documentary evidence.*—*Per* BAYLEY, J.—The omission in the first Court to enquire or specify in the judgment as to whether a pottah, which is admittedly 100 years old, and which is supported by the evidence of old witnesses, comes from proper custody or not, is not a sufficient reason to invalidate the finding that the pottah is proved; nor is it a defect in the investigation affecting the merits of the case which would justify the interference of the High Court in special appeal. *Per* GLOVER, J.—The question as to proper custody is not in issue, the Judge having found the pottah proved by the evidence of witnesses. BUDDIOODDEEN *v.* GOLAM PEER . . . . . 17 W. R., 279

266. ———— *Error of Judge in not giving proper effect to evidence.*—In order to support a contention that the judgment of the lower Appellate Court is erroneous in law because the Judge has failed to give proper effect to the documentary evidence adduced, it is necessary for the special appellant to show not only that the evidence is calculated to support certain conclusions, but that these conclusions alone flowed from it. SHAM NARAIN *v.* COURT OF WARDS . . . 20 W. R., 197

267. ———— *Finding as to genuineness of deed from copy put in evidence.*—The finding of a lower Appellate Court pronouncing, on evidence, on the genuineness of a deed on the production of a copy (the original having been lost) is not open to interference in special appeal. BHUGWAN CHUNDER BANERJEE *v.* DUKHINA DEBIA [8 W. R., 356

268. ———— *Finding as to genuineness of document.*—A decision that a document was not genuine cannot be interfered with on special appeal. TARA PROSUNNO MOJOOMDAR *v.* BISHO NATH SIRCAR . . . 23 W. R., 144

Reversing on appeal BISSONATH SIRCAR *v.* TARA PROSONNO MOZOOMDAR . . 22 W. R. 482

269. ———— *Use of probabilities against direct evidence.*—Where the lower Appellate Court merely on the appearance of a document discarded the evidence of witnesses who testified to the making and signing of it, the High Court reversed its decision, on the ground that probabilities which are useful as aids in considering the true value of direct evidence can seldom be safely had recourse to alone for the purpose of entirely invalidating direct evidence. LALLAH JHA *v.* TULLEEMATOOL ZUHRA . . . . 21 W. R., 436

270. ———— *Erroneous and unnecessary presumption of fact.*—Where the Court concluded against the genuineness of a document on a presumption erroneous or one which did not necessarily arise, his decision was set aside on special appeal. AKJOO BIBEE *v.* KOONJO BEHAREE LALL [19 W. R., 288

WISE *v.* RUBAA KHATOON . 19 W. R., 299

GOPAL CHUNDER GHOSE *v.* TINCOWREE MUNDUL [19 W. R., 349

MEHER BANOO *v.* KERAMUT ALI 22 W. R., 402

271. ———— *Comparison of signatures in unusual manner leading to erroneous conclusion.*—Where the lower Appellate Court relied on a comparison between the signature in a mortgage-deed and the signature in a vakalatnama, and it appeared in special appeal that there were very considerable discrepancies between the signatures, the High Court (departing from the ordinary assumption in such cases that the comparison had taken place in open Court before the parties in the usual way) concluded that the comparison had been conducted in some way which led the lower Court into error. They accordingly reversed its decision and remanded the case for re-trial. PHOODEE BIBEE *v.* GOBIND CHUNDER ROY . . . . . 22 W. R., 272

SPECIAL OR SECOND APPEAL—*continued*

5. GROUNDS OF APPEAL—*continued.*

272. ———— *Receipts for rent—Comparison of signatures—Credibility of evidence*—In a suit for rent the defendant pleaded payment and put in evidence receipts for the rent claimed The Court of first instance disbelieved this evidence and gave a decree for the plaintiff The Judge on appeal compared the signature of the plaintiff on the receipts with his signature to a document not in evidence in the case, and reversed the decree and dismissed the suit *Held* that the decision

273. ———— *Receipts for rent—Civil Procedure Code, 1859, s. 372—Error in investigation of case*—In a suit for arrears of rent the defendant pleaded payment and filed receipts The Collector distrusted the receipts and gave a decree in favour of the plaintiff, saying that as to three of the receipts evidence had been given which he did not believe, and that with respect to the other receipts no evidence had been offered The Judge, on appeal, reversed the decree and gave a decree in favour of the defendant, expressing an opinion that the distrust of the evidence in support of the three receipts was without sufficient reason *Held* that, with respect to the receipts in support of which no evidence had been offered, the plaintiff was entitled to

the case upon the merits, within s 372 of Act VIII of 1859, and was therefore ground of special appeal. MOHUN CHUNDER DHUR *v* KIDGE [Marsh, 381: 2 Hay, 419

274. ———— *Misapprehension of, and irregular dealing with, evidence by Appellate Court—Ground for reversing decision.*—

in evidence before the first Court, and also came to the conclusion that certain documents whose authenticity had been sworn to were fabricated merely because their appearance seemed to indicate this, the High Court in special appeal held that the case had not been properly tried, and, reversing the decision of the lower Appellate Court, remanded the case for retrial, excluding from the evidence on the record the evidence which had been received in the appeal stage without any reasons being recorded for its admission NOWAB KHAN *v* RUGHOONATH DOSS [20 W. R, 474

275. ———— *Error in law—Misconstruction of document*—The misconstruction of a document is an error in law sufficient to form a ground of appeal ODIT NARAIN *v* MAHESHUR BUX SINGH . Agra, F. B, 52: Ed. 1874, 39

276 ———— *Misconstruction of document—Error on facts.*—Where the Court in recording the words of a document on which it relies puts one term for another, it is a misconstruction

incompatible with the wording of the document KALEE CHURN PATTUR *v* CHUNDER CHURN MUNDUL . . . . 9 W. R., 366

277. ———— *Misconstruction of documents*—*Per* AIKMAN, J—*Semble*—That a ground of appeal to the effect that the lower Appellate Court has misconstrued a document is not one of the grounds of second appeal contemplated by s 584 of the Code of Civil Procedure RUDR PRASAD *v.* BAIJNATH I. L. R, 15 All, 367

278. ———— *Question of*

sion turned entirely on the construction of a written admission which had been wrongly understood. LALLA IMRIT LALL *v* MAHOMED LALLZAMAH [18 W. R., 447

279. ———— *Mistake as to meaning of evidence—Misconstruction of document.*—The misconstruction of a document which is the

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a mistake as to the meaning of some portion of the evidence which is in writing, if it is connected with other evidence affecting its construction NOWBUT SINGH *v* CHUTTER DHAREE SINGH 19 W. R, 222

280 ———— *Error in construction and dealing with sale certificate*—A Judge is bound to give full effect to the terms of a sale certificate, and when he proceeds to limit the effect of that certificate by certain inferences and conclusions drawn from other documents he does that which he is not at liberty to do, and commits an error of law which it is in the power of the High Court to remedy on special appeal MOOKHYA HURUCKRAJ JOSHEE *v* RAM LALL GOMASHTA 14 W. R., 435

281. ———— *Construction of depositions of witnesses*—The construction of the deposition of witnesses is not a question of law, and therefore not a ground of special appeal HIMMUT ALI KHADIM *v* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal, NIAMUTOOLLAH KHADIM *v* HIMMAT ALI KHADIM . . 22 W. R, 519

282 ———— *Construction of document—Question of fact*—Where the conclusion of the lower Appellate Court rested, not only upon the contents of a document involving the question of its

SPECIAL OR SECOND APPEAL —*continued.*

5. GROUNDS OF APPEAL—*continued.*

correct construction, but also upon all the facts of the case and the whole conduct of the parties,—*Held* that it was not open to special appeal. BUNGSHEE DHUR MAHATA *v.* MUDHOO SOODUN CHOWDHRY [23 W. R., 406

283. ———— *Decision without sufficient evidence.*—In a suit on a kabuliat, the Court of first instance found that the kabuliat had not been signed by the defendant, but by a third party, and that there was no evidence that such third party was authorized to sign it. The Judge on appeal reversed the decision. *Held* that the decision of the Judge holding the defendant responsible for the signature of a person of whose authority there was no evidence was erroneous in point of law, and was a ground of special appeal. SHAM CHAND BYSACK *v.* BUNGO CHUNDER CHATTERJEE [Marsh., 556: 2 Hay, 663

284. ———— *Finding of fact as to Ameen's report.*—Where the lower Appellate Court finds as a fact that the Ameen's report is untrustworthy and his map wrong, the finding cannot be interfered with by the High Court in special appeal. SHEO DYAL SINGH *v.* HODGKINSON [24 W. R., 342

285. ———— *Omission to record opinion on evidence.*—The omission to record an opinion on one of many items of evidence (*e.g.*, an Ameen's report) is not such an error in law as to come within the scope of the provisions for special appeals. BUNDHOO SOOKOOLANY *v.* JOY PROKASH SINGH . . . . . W. R., 1864, 367

HIMMUT ALI KHADIM *v.* NYAMUTOOLLAH KHADIM [23 W. R., 250

Upholding on appeal under the Letters Patent the decision of KEMP, *J.*, in NIAMUTOOLLAH KHADIM *v.* HIMMUT ALI KHADIM . 22 W. R., 519

286. ———— *Entry in account book—Error in law.*—The improbability of plaintiff having received payment for one bill whilst another and older one remained unpaid was no reason for the Judge refusing to consider the evidence adduced by plaintiff in support of her demand, and his not having done so was held to be an error of law. So also the Judges having entirely ignored the evidence with regard to an entry in the plaintiff's day-book on which the first Court decided the case was held to be an error of law in the investigation and a proper subject for special appeal. DARIMBO DEBEE *v.* HURREEHUR MOOKERJEE . . 18 W. R., 53

287. ———— *Documents improperly admitted.*—Where a Judge is influenced in his estimate of parol testimony by the result of his consideration of documents which he ought not to have dealt with as evidence, there was held to have been no proper trial of the case. The High Court on special appeal remanded the case. BOIDONATH PAROOYE *v.* RUSSICK LALL MITTER . 9 W. R., 274

PURAN CHUNDER CHATTERJEE *v.* GRISH CHUNDER CHATTERJEE . . . 9 W. R., 450

288. ———— Oral evidence—*Difference of opinion between lower Courts as to credibility of witnesses.*—Where the Courts differ as to the credibility of witnesses, such difference does not form a ground of special appeal. SREEKANT GHOSE *v.* BHUWAN CHUNDER SEN . . 24 W. R., 13

289. ———— *Finding as to materiality of evidence or witnesses.*—Though a Judge has a right to say that in the absence of a witness he considers material he cannot give the plaintiff a decree, yet where he stated that unless a certain witness (from whom the plaintiff had got a conveyance which it was necessary for him to prove) attended and gave evidence the plaintiff could have no right whatever, his decision was held to be wrong in law and was set aside on special appeal. RAM DHUN BANERJEE *v.* RAM NARAIN MOOKERJEE [11 W. R., 311

290. ———— *Discrediting witnesses for general reasons—Error in law.*—For the lower Appellate Court to discredit witnesses merely for general reasons not affecting the particular credit of any individual deponent is to commit an error of law which can be the subject of a special appeal. SHEO PURSHUN PANDEY *v.* BRUN PANDEY [24 W. R., 251

291. ———— *Disbelief of witness as interested party.*—A special appeal will not lie merely on the ground that the lower Appellate Court has disbelieved a witness by reason of his being an interested person or for any other reason within its discretion. DWARKANATH DOSS BISWAS *v.* MUDDUN MOHUN CHUCKERBUTTY [6 W. R., 292

292. ———— *Omission to give reasons for believing witnesses disbelieved by lower Court.*—The omission of a lower Appellate Court to give its reasons for believing witnesses disbelieved by the first Court does not constitute a ground of special appeal. LUCKHEE MONEE DOSSIA *v.* RAJKISHORE PAUL . . 4 W. R., 106

Nor the omission to give reasons for confirming the decision of the lower Court. SHAMEE MOHAMED *v.* PRODHAN PALEE . . . 5 W. R., 178

293. ———— *Omission to give reasons for believing witnesses.*—No general rule can be laid down as to when the reasons should be stated by an Appellate Court for believing one set of witnesses rather than another; and the omission of a lower Appellate Court to state such reasons is not a ground for special appeal. SHUMSHUROODDY *v.* JAN MAHOMED SIKDAR . . . 21 W. R., 260

MUKDOOMUNNISSA *v.* NOKHY SINGH [24 W. R., 296

294. ———— *Omission to remind witness of former contrary statement—Reference to statement in judgment.*—When witnesses under examination make statements which are contrary to statements previously made by them, the

SPECIAL OR SECOND APPEAL —*continued*

5 GROUNDS OF APPEAL—*continued.*

Court ought to draw their attention to the contradiction, but an omission to do so does not make the judgment bad in law, because he has remarked on those contrary statements in his judgment SHAM LALL *alias* SHAMA *v* ANUNTEE LALL [24 W. R, 312

295 ———— *Putting onus of proof on wrong party — Irregularity affecting merits—Error in law* — A suit instituted in the Court of the Principal Sudder Ameen was transferred under s 6 of Act VIII of 1859 to the Court of the

who alleged the want of it *Held* (1) that the Munsif's having used the evidence recorded by the Principal Sudder Ameen was only an irregularity which was waived by the plaintiff not requiring the

being in the plaintiff's favour, it was not a ground for reversing the decree on special appeal, (2) that the onus was not thrown by the Judge upon the

v NAROSHANKAR CHANDRO SHANKAR [4 Bom., A. C, 98

296 ———— Admission or rejection of evidence — *Error in admission of document insufficiently stamped* —An error in the admission of an insufficiently stamped promissory note was held not to be an error affecting the decision of the case on its merits MAKBUL AHMAD *v* IFTIKHARUNNISSA BEGUM . . . 7 N. W, 124

District Court's refusal *Pendse* v *Malse, 3 Bom, A. C, 94*, commented on GAMBHIRMAL *v*. CHEJMAL [10 Bom, 406

SPECIAL OR SECOND APPEAL —*continued.*

5 GROUNDS OF APPEAL—*continued.*

298. ———— *Error in admission of secondary evidence* —Whether secondary

o without sufficient)EBIA [9 W. R, 517

299. ———— *Refusal to admit secondary evidence of lost deed* —All that it would be right for the Court to require for the protection of the revenue in cases where a lost deed was shown not to have had a stamp would be that the same money should be paid, before admitting secondary evidence, as would have to be paid if the deed itself were produced If the Court does not do that, but allows secondary evidence to be given of the contents of the deed, it is not an error which affects the merits of the decision or is a ground for special appeal HARAN CHUNDER BHOOREE *v* RUSSICK CHUNDER NEOGY . 20 W. R., 63

300 ———— *Refusal to allow additional evidence—Discretion of Court.*—The parties in an appeal are not entitled as of right to put in additional evidence The Appellate Court allows additional evidence in certain cases, but a special appeal will not lie in the event of the Court refusing to allow it GOLAM MUCKDOOM *v* HAFEEZOONISSA [7 W R., 489

KULPO SINGH *v* THAKOOR SINGH [15 W. R, 429

v SHOSHEE MOOKHEE DEBIA 6 W. R., 196

302. ———— *Taking of additional evidence by Appellate Court—Civil Procedure Code (Act XIV of 1882) s 568* —Where the lower Appellate Court allows additional evidence to be taken, though it is not satisfied that the evidence is necessary under cl. (*a*) or cl (*b*) of s 568 of the Code of Civil Procedure, the High Court will interfere on special appeal, but where this does not appear to be the case, and there is simply an omission on the part of the Appellate Court to record its reasons for allowing additional evidence to be taken, the High Court will not interfere. HAFIZ ABDUL KURRIM *v* SRI KISSEN RAI [I. L. R, 11 Calc, 139

303. ———— *Omission to give reasons for admission of additional evidence.*—*A* sued *B* for rent, making *C* a defendant the suit was dismissed and *A* appealed Then *C* sued *B* for rent, *A* intervened and was made a defendant, a decree was passed in favour of *C*, and *A* again appealed. On appeal the Subordinate Judge tried both suits on

SPECIAL OR SECOND APPEAL
—*continued.*

5. GROUNDS OF APPEAL—*concluded.*

the same evidence, though there was evidence in the second case which was not before the lower Court on the hearing of the first. *Held* that he should have recorded his reasons for doing so, but that the judgment would not be set aside on that ground, it not appearing that the party taking the objection had been prejudiced or that it had been raised before the Subordinate Judge. PRANNATH SANDYAL *v.* RAM COOMAR SANDYAL . . . 2 C. L. R., 33

304. ——— *Improper rejection of evidence.*—The improper rejection of evidence affecting the decision of the case on the merits is an error in law which may be set aside on special appeal. HURO CHUNDER CHOWDHRY *v.* GOBIND CHUNDER MOITREE . . . . . 17 W. R., 255

305. ——— *Rejection of evidence which ought to have been admitted—Ground for interference.*—The fact that the Judge may have rejected evidence which ought to have been received and considered does not warrant the High Court in interfering to set aside an order of such Judge. VENKATACHELLA CHETTI *v.* PARVATAMMAL [2 Mad., 418

6. OTHER ERRORS OF LAW OR PROCEDURE.

(*a*) APPEALS.

306. — Appeal wrongly admitted —*Orders and proceedings thereon without jurisdiction.*—Where an appeal was allowed from an order rejecting a review, and other acts and proceedings took place based on such illegal order, the High Court set aside all the proceedings in special appeal. JEWUN BIBEE *v.* BUDDUN MUNDUL [9 W. R., 489

307. ——— *Appeal heard and decided without objection where no appeal lay.*—Although Act XXIII of 1861, s. 26, barred an appeal from an order or decision passed in a suit instituted under Act XIV of 1859, s. 15, yet where an appeal was made in such a case, no objection taken, and the appeal decreed, the High Court refused to interfere, the lower Appellate Court's decree having given the plaintiff what the first Court ought to have given. HURDYAL SINGH *v.* KUNHYA LALL [19 W. R., 247

308. ——— *Appeal heard ex-parte without respondent being aware of hearing—Application for rehearing barred before he was aware of decree against him—Civil Procedure Code, ss. 560 and 584 (c)—Limitation Act, sch. II, art. 169—Power of High Court to interfere on special appeal.*—Where an appeal was heard *ex-parte* by a lower Appellate Court and the decree of the Court of first instance reversed in the absence of the respondent, on whom notice of appeal had not been duly served, and who was not aware of the proceedings till after the time for applying for a rehearing under s. 560 of the Civil Procedure Code and Limitation Act, sch. II, art. 169, had expired,—*Held* that the High Court in second appeal had power to interfere under s. 584 (*c*), Civil Procedure Code. BALAJI RAU *v.* SITHABHOY [I. L. R., 19 Mad., 414

309. ——— *Order rejecting appeal not presented in time without sufficient cause for delay—Discretion of Judge—Exercise of discretion not to be interfered with.*—Where an appeal has been dismissed as barred by limitation, the lower Court holding that there was no sufficient cause for not presenting it within the prescribed time, the High Court can only interfere in second appeal if that decision is contrary to law, that is, if the lower Court has exercised its discretion capriciously or arbitrarily or without proper legal material to support its decision. PARVATI *v.* GANPATI ROKDAJI NAIK . . . . I. L. R., 23 Bom., 513

(*b*) COSTS.

310. ——— Interference with award of costs.—The Court may interfere with the award of costs on appeal. JAFREE BEGUM *v.* AHMED HOSSEIN KHAN . . . . 1 Agra, 270

311. ——— Question of costs.—There may be circumstances which would justify an appeal upon a mere question of costs. CHITRAYIL *alias* KUNATH AHMED KOYA *v.* IRUMANOM VITTIL KANHAMATH HAJI . . . . 3 Mad., 279

312. ——— *Mode of awarding costs.*—The question of how costs have been awarded is not a point for special appeal. BEER PERSHAD *v.* DOORGA PERSHAD W. R., 1864, 215

313. ——— *Appeal from portion of decree relating to costs.*—*Held*, in conformity with a Full Bench ruling of the late Sudder Court, that a special appeal lies from the order of the lower Courts in matters relating to costs, and that there is nothing in the law limiting or taking away the right to appeal specially from that part of a decree which relates to costs in any case where any legal ground for special appeal is shown to exist. ASSA RAM *v.* KASHMEEREE DASS [Agra, F. B., 90: Ed. 1874, 68

314. ——— *Discretion in assessing costs—Civil Procedure Code, 1859, s. 187.*—Where no appeal is made against the judgment passed on the subject-matter of the suit, the discretionary power of assessing costs given by s. 187 of Act VIII of 1859 should not, unless in a very exceptional case, be interfered with by the Appellate Court. KUPPUSVAMIAYYAN *v.* NANNUVÁYYAN [1 Mad., 74

315. ——— *Improper exercise of discretion in awarding costs.*—An improper exercise of discretion in awarding costs against which a regular appeal would lie is no ground for allowing a special appeal, unless the award is contrary to some

SPECIAL OR SECOND APPEAL—*continued*

6 OTHER ERRORS OF LAW OR PROCEDURE—*continued*

particular law on the subject AMIRSAHEB HAFIZULLA *v* JAMSHEDJI RUSTAMJI [4 Bom, A. C., 41

DESAJI LAKHMAJI *v* BHAVANIDAS NAROTAMDAS [8 Bom, A. C, 100

316 ———— *Improper exercise of discretion in awarding costs*—There is no foundation for the opinion that an Appellate Court has no authority to interfere with the discretion of

[3 Mad, 113

318 ———— — *Error in impro-*

late Court, the error is not such as would justify the High Court's interference in special appeal OOMA CHURN *alias* GOPAL CHUNDER ROY MOZOOMDAR *v* GIRISH CHUNDER BANERJEE 25 W. R., 22

319 ———— *Order in discretion of lower Court*—Where, in a suit for defamation, a decree was given for the plaintiff for nominal damages, but he was ordered to pay the defendant's costs,—*Held* that the order as to costs was in the discretion of the Court below, and therefore no special appeal would lie from such order the rule, as laid down in *Girdhari Lal Roy v. Sundar Bibi, B L R, Sup Vol, 496,* being that an order as to costs cannot be interfered with in special appeal unless it is illegal FUTEEK PAROOEE *v* MOHENDER NATH MOZOOMDAR . I. L. R., 1 Calc., 385: 25 W. R., 226

Reversing on appeal under the Letters Patent the decision in MOHENDRO NATH MOJOOMDAR *v* FUTTICK PAROOE 24 W. R., 319

ACHUMBIT SINGH *v* KUNHYA LAL MOHAJUN [7 W. R, 208

(c) DISCRETION, EXERCISE OF, IN VARIOUS CASES

320. ———— Order for security for costs—*Appeal struck off in default—Absence of error in law*—When the Civil Procedure Code gives to a Court of regular appeal a discretionary power, and that discretionary power has been fairly exercised,

it is no good ground of special appeal that a wiser exercise of the discretion would have led to different results In a regular appeal the District Judge, at the instance of the respondent, on 26th March called upon the appellant, who *resided out of British territory*, to show cause, within two days, why, under s 342 of Act VIII of 1859, he should not furnish secu-

law, the High Court had no power to interfere in special appeal. *Held* also that, if the appellant had, after the order of 26th March, come into Court without delay, or even on 13th May applied for an adjournment to enable him to put in proof that he held land in Jhansi, and been refused that permission, the Court would have interfered in special appeal GOPAL KHUNDEE RAO *v* DEOKEE NUNDUN [6 N. W, 172

321 ———— Exercise of discretion not

legal material to support its decision PARVATI *v* GANPATI ROKDAJI NAIK . I L R., 23 Bom, 513

322. ———— Execution of decree—*Discretion of Court executing decree—Civil Procedure Code, 1859, s 207*—It is entirely in the discretion of

SPECIAL OR SECOND APPEAL—*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

the Court executing a joint decree to make arrangements under Civil Procedure Code, s. 207, regarding its execution by one of the decree-holders and to take necessary steps for the protection of the interests of the rest; and if it does not choose to do that, it cannot be pronounced wrong in special appeal. HERA ROY v. GUJADHUR PERSHAD NARAIN SINGH [24 W. R., 286

323. ——— **Refusal to grant fresh summons**—*Delay.*—An exercise of the discretion of the Court in refusing to grant a fresh summons on account of delay in applying for it cannot be interfered with on special appeal. BROJO LALL MOOKERJEE v. AUGHOR LALL GHOSAL . 25 W. R., 71

324. ——— **Order for payment of decree by instalments without providing for interest or penalty agreed upon on default**—*Discretion, Arbitrary exercise of—Civil Procedure Code, 1859, s. 194.*—When the lower Courts ordered the decree to be paid by instalments which were hardly sufficient even to cover the interest and did not provide for the interest and penalty conditioned in case of default,—*Held* that they had exercised the discretion vested in them by s. 194, Act VIII of 1859, arbitrarily and without due caution, and their order could be interfered with and set aside on special appeal. HUR GOBIND v. HURKHO [1 Agra, 116

JAFREE BEGUM v. AHMED HOSSEIN KHAN [1 Agra, 270

325. ——— **Refusal to allow application to amend plaint**—*Discretion to allow amendment of plaint.*—A lower Court has discretion to permit, or not, the filing of a petition to amend a plaint, and its refusal is no ground for special appeal. WATSON & Co. v. NIDHOO DIGWAR 10 W. R., 87

326. ——— **Interest, Award of**—*Interest on decree, Discretion of Court in allowing.*—The Court executing a decree has a discretion in allowing interest, which will not be interfered with in special appeal. PARES NATH MUKHOPADHYA v. KISTOMOHAN SAHA [3 B. L. R., Ap., 105: 12 W. R., 50

(*d*) ISSUES, OMISSION TO DECIDE.

327. ——— **Omission to consider material facts**—*Remand of appeal heard by a Subordinate Judge to District Judge—Act XIV of 1882, s. 566.*—If on second appeal it is found that certain material facts, having an important bearing upon a question at issue in the suit, have been omitted to be considered by the lower Appellate Court, the High Court will interfere with the decision of the lower Appellate Court, even though it be on a question of fact. DENA NATH BANERJEE v. HARI DASI [I. L. R., 11 Calc., 499

328. ——— *Omission to try question of possession when material.*—When the plaintiff sued as owner of property in dispute and in which the defendant admitted the plaintiff's possession, but qualified it by saying that the plaintiff held as zur-i-peshgidar or mortgagee, the omission of the Appellate Court to try the question of possession is an error of law in the investigation which the Court will take notice of on special appeal. GOPAL ROY v. TEKAET ROY . . . . 8 W. R., 333

329. ——— **Omission to decide on limitation.**—An omission by the Judge on appeal to decree according to the law of limitation applicable to the case as stated by the plaintiff, although the objection may not be raised in the grounds of appeal, is an error or defect in the decision of the case on the merits and a ground of special appeal. SALUJI KESRAJI v. RAJSANGJI JALMSANGJI [3 Bom., 169: 2nd Ed., 162

330. ——— **Omission to inquire into defendant's plea**—*Suit for confirmation of title and possession.*—Where a purchaser sues for confirmation of title and possession, and the plea set up by the defence is that the rights and interests in question were previously transferred to another party who had sold it to the defendant's vendor, the omission of the Court to inquire into the alleged transfer and see whether it was genuine, and, if so, whether it was a real or only a colourable transaction, is an error in the decision which is a ground of special appeal. BHUGOBUTTY v. BIKRAMAJEET SINGH . 8 W. R., 477

331. ——— **Omission by Appellate Court to decide on the question of ownership**—*Suit before Subordinate Judge depending on issues of ownership as well as on a rent-note.*—Where it appeared that an issue was raised as to ownership, and that both parties at the trial before the Subordinate Judge gave evidence on such issue (although the claim was based, in the main, on a rent note), and the lower Appellate Court omitted to find on such issue,—*Held,* reversing the decrees of the lower Appellate Court, that it ought to have found on the issue as to ownership. RAMKOR GOPALJI v. GANGARAM . . I. L. R., 16 Bom., 545

(*e*) JUDGMENTS.

332. ——— **Reversal of judgment without reasons**—*Difference of opinion as to facts.*—A special appeal lies from an Appellate Court's judgment, in which the decree of the lower Court is reversed without any reasons given for differing as to facts. GOBURDHUN v. SADHOO . 1 W. R., 244

333. ——— **Omission to state reasons in judgment**—*Civil Procedure Code (Act XIV of 1882), ss. 574, 584.*—The fact that the judgment of an Appellate Court is not drawn up in the manner prescribed by s. 574 of the Civil Procedure Code is no ground for a second appeal under s. 584 unless it can be shown that the judgment has failed to determine any material issue of law. BISVANATH MAITI v. BAIDYANATH MANDUL . I. L. R., 12 Calc., 199

SPECIAL OR SECOND APPEAL
—*continued*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued*

334 ———— *Finding of fact —Civil Procedure Code, 1882, s 204* —A finding unaccompanied by the reasons for it, as required by s 204 of the Code, is not a conclusive finding of fact binding on a Court of second appeal KAMAT *v* KAMAT . I L. R, 8 Bom, 368

335 ———— The Judge decided that the plaintiff was barred by limitation, but his judgment did not disclose the grounds on which he held that plaintiff was not entitled to deduct, in calculating the twelve years' limitation the time occupied by certain suits brought for the same property, in which he was non suited *Held* that it was *no ground of special appeal that the judgment* was silent on the subject of the claim to deduction, and that, whether the point was urged in the lower Court or not, the plaintiff had no ground of special appeal in respect of omission of all notice of it in the judgment RAMSOONDER DOSS *v* MAHOMED ABBED [1 Ind. Jur, O. S, 102

336. ———— *Error of procedure—Civil Procedure Code, 1859, s 359* —A lower Appellate Court's omission to give reasons cannot be considered a ground for special appeal when it has not produced error or defect in the decision upon the merits. Where a lower Appellate Court has omitted to state reasons, and it appears to the High Court that reasons should have been stated, the proper course is to retain the case on special appeal, but to return the proceedings and require the omission to be supplied DOOLEE CHUND *v* *OOMDA BEGUM* . 18 W. R, 473

337. ———— Omission to state points

of special appeal. ROOP CHAND ROY *v* RAM KANT KOBEERAJ . . W. R, 1864, 98

[4 Bom, A. C, 105, 109

339 ———— Decision on point not contested.—*In a* suit by a talukhdar, where the dispute was whether certain land which the plaintiff held was what he was *entitled* to hold as lakhiraj, under a sanad which he produced, and as to the genuineness of which no question was raised, the lower Appellate Court indicated that it considered the sanad not to be genuine *Held* that this was an important error, as the genuineness of the sanad was in no way in issue, and that the judgment must be set aside and the case remanded RAM SOONDUR BANERJEE *v* KALEE PERSHAD HAJRAH [19 W. R., 267

340 ———— Decision for plaintiff on ground not alleged by him—*Civil Procedure Code, 1859, s 350—Error not affecting merits.*—In a suit for possession of a quantity of land, where the first Court gave plaintiff a decree on the ground that he had proved title by purchase, and the lower *Appellate Court, in confirming the decision on the* substantial issue raised, went further, and found that

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self,—

affect the merits of the case or the jurisdiction of the lower Court, and the High Court could not therefore interfere under s. 350 of the Code of Civil Procedure RAM CHUNDER CHATTERJEE *v* RAM *JEEBUN DASS* . . 14 W R., 141

341 ———— Decision founded on issues not raised in the suit—*Error of law* —In a suit for the recovery of land upon an alleged lease found *to be not genuine, the defendants set up* a sale by plaintiff's father The lower Court found that there had been a sale in fact, but held it to be invalid according to Hindu law, as having been without the concurrence of the plaintiff, the son of the vendor *Held* that the validity of the sale not having been questioned by the plaintiff, who had rested his case on

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cial appeal PALANI YANDI KAUNDAN *v* MUTTUSAMI KAUNDAN . . 2 Mad., 441

(*f*) LOCAL INVESTIGATIONS

342 ———— Order directing local investigation—*Discretion of Court* —Directing a local investigation or not is a mere matter of discretion in which no special appeal will lie of right. *GRAHAM v LOPEZ* . 1 W R, 141

BYKUNT NATH SEIN *v*. PEAREE MONEE DASSEE [1 W R., 196

POORNO PERSAD ROY *v* CHUNDER NATH CHATTERJEE . . 1 W R., 249

RAJKISHEN MOOKERJEE *v* HURO MOHUN MOOKERJEE . 5 W R., 248

343 ———— Order as to local inquiry —*Discretion of Judge* —It is within the discretion of a Judge to order or refuse a local inquiry When,

of the inquiry RASH BEHAREE SINGH *v* SAHEB ROY . . . 12 W. R., 76

344. ——— Omission to direct local investigation - *Error in law.*—It is not an error in law in the investigation of a case where the Courts below do not direct a local investigation of their own motion when they are not asked by the parties to do so. MACDONALD *v.* MUNAR ROY
[B. L. R., Sup. Vol., 358 : 3 W. R., Act X, 153

345. ——— Local inquiry in suit as to enhancement of rent—*Discretion of Judge to order local inquiry in suit to contest notice of enhancement—Order of Judge.*—In a suit brought to contest a notice of enhancement, a Judge is not bound to order a local inquiry, merely because he incidentally states such an inquiry to be the best source from which to obtain reliable evidence upon the point of rates. Nor will a special appeal lie on the subject of the Judge exercising a discretion as to ordering or not ordering such an inquiry. HERALOLL SEAL *v.* GUNGADHUR SUNNAPUTTY
[W. R., F. B., 19 : 1 Ind. Jur., O. S., 8
1 Hay, 229

GUNGADHUR SUNNAPUTTY *v.* HERALOLL SEAL
[Marsh., 60

346. ——— Irregularity in local inquiry—*Civil Procedure Code, 1859, s. 180—Appointment of improper officer.*—Though s. 180, Act VIII of 1859, makes it imperative on a Court to employ in the first instance the regular officer of the Court to hold a local inquiry, non-compliance with this requirement of law is not *per se* a ground of special appeal. RAMDOSS KOONDOO *v.* NILKANTO DHUR . . . . . 8 W. R., 6

347. ——— *Disregard of report on local investigation—Disputed boundary —Grounds of appeal—Civil Procedure Code (Act XIV of 1882), s. 584.*—The Court of first instance accepted as correct a boundary line mapped by an Ameen, dividing the estates of the opposite parties. The lower Appellate Court, after remanding the suit for a second local investigation and report, determined to disregard the second return, which differed from the first, and affirmed the judgment. Both parties having appealed, the High Court, dissatisfied as to this disregard of the second return, decided to hear the appeal as a regular one, examined the evidence, and reversed the judgment of the Court below. *Held* by the Privy Council that to have dealt with the appeal as a regular appeal was in excess of the Court's jurisdiction; and that it had no power to hear the appeal as a second appeal, there not having been in the proceedings below any error or defect, within the meaning of s. 584 of the Civil Procedure Code, which contained the only grounds of second appeal. LUKHI NARAIN JAGADEB *v.* JODU NATH DEO
[I. L. R., 21 Calc., 504
L. R., 21 I. A., 39

348. ——— *Hearing and deciding case after granting commission for local investigation, without awaiting return of such commission—Ground of appeal—Civil Procedure Code, s. 584.*—Where a Court on the application of a party or otherwise has issued a commission for a local investigation, it is a substantial error in procedure and therefore a ground of special appeal, under s. 584 of the Code of Civil Procedure, if the Court proceeds to hear and determine the case without having the return of such commission before it. MADHO SINGH *v.* KASHI SINGH
[I. L. R., 16 All., 342

(*g*) MISTAKES.

349. ——— Mistake in account—*Review, Application for.*—A mistake of account not being an error in law or procedure is not a ground for special appeal. The remedy lies in an application for review. RAM KANTH ROY CHOWDHRY *v.* KALEE MOHUN MOOKERJEE . . 22 W. R., 310

PROSUNNO COOMAR DUTT *v.* CHYTUNNO CHURN BIDYALUNKAR . . . . 25 W. R., 74

350. ——— Error in description of defendant as a minor—*Appeal by guardian treated as appeal by minor.*—The father of a defendant filed an appeal from the judgment of the first Court, describing his son as a minor. It afterwards appeared that the defendant was not a minor; and the lower Appellate Court refused to pass an order, allowing the appeal by the father to stand as an appeal by the defendant. *Held* that the lower Appellate Court could, in the exercise of its discretion, allow the appeal to stand as an appeal by the defendant, but the High Court could not interfere with the order in special appeal. SHAMA CHARAN GHOSE *v.* TARAK NATH MUKHOPADHYA
[3 B. L. R., Ap., 115

351. ——— Decree proceeding on mistake as to applicability of law—*Mistake of Judge not affecting merits.*—The Court will not interfere on special appeal with a decree proceeding on a mistake as to the applicability of a law when such error does not affect the decision of the case. KUBEEM KHAN *v.* MUHFOOZ
[W. R., F. B., 16 : 1 Ind. Jur., O. S., 77
1 Hay, 226

S. C. JUGOBUNDOO MOZOOMDAR *v.* GOOROO PERSAD ROY . . . . . Marsh., 52

ESSAN CHUNDER DUTT *v.* PRANNAUTH CHOWDHRY
[Marsh., 270 : 2 Hay, 236

AKBUR ALLY *v.* HOSSAN ALLY
[1 Ind. Jur., N. S., 101 : 5 W. R., Mis., 29

(*h*) MULTIFARIOUSNESS.

352. ——— Misjoinder of causes of action.—Misjoinder of causes of action is not alone a valid ground of special appeal. SHUNKUR PATUKH *v.* LALA SHEO CHURN LAL
[2 N. W., 443 : Agra, F. B., Ed. 1874, 238

SPECIAL OR SECOND APPEAL —*continued*

6 OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

for special appeal DURSHUN PANDEY *v* SAMINAH BEBEE . . . 1 W. R., 114

354. ———— *Material ir-* ... separate ... plaintiffs, ... ery up of ... certain nekasi papers—was filed and tried as a single suit, the Court trying the case was held to have committed not a mere technical irregularity, but an incorrect proceeding liable to lead to injustice and a ground for interfering with the judgment on special appeal. RAMCOOMAR SIRKAR *v* KALEE COOMAR DUTT . . . 10 W. R., 279

... ground of special appeal MAHOMED HOSSEIN *v* POTUN . 20 W. R., 147

(i) PARTIES

356 ———— Adding parties—*Discretion of Court* —The exercise of the discretion a Court had to add parties under s 73, Act VIII of 1859, could not be interfered with on special appeal unless it was manifestly unjudicial and wrong. GYARAM SEAL *v* ISSUR CHUNDER CHUCKERBUTTY [2 W. R., 158

PORAN MUNDUL MOLLAH *v* SHAM CHAND GHOSE [1 W R., 228

357. ———— *Error in adding party as plaintiff—Civil Procedure Code, 1877, s 591.*—In a suit for rent where the defendant alleged that a person not on the record had a joint interest with the plaintiff in the property in respect of which the rent was due, and where the plaintiff disputed this and the third person was added by the Court as a co-plaintiff,—*Held* this would be an error or defect to which objection could be taken in the memorandum of appeal under s 591 of Act X of 1877 GOOGLEE SAHOO *v* PREMLALL SAHOO [I. L. R., 7 Calc., 148

358 ———— *Unappealed order—Civil Procedure Code, 1882, s 591—Order making person respondent* —S 591 of the Code enables the Court, when dealing with an appeal from a decree, to deal with any question which may arise as to any error, defect, or irregularity in any order affecting the decision of the case, though an appeal from such order might have been and has not ... oo, ... the ... ied, ... of *H* was entered on the record as respondent, in place of the deceased Subsequently *K* applied to be sub- ...

appeal, and passed a decree that the money claimed in the suit was payable to the two respondents *Held* that, on appeal from the decree of the Court below, *H* was entitled to object to the order adding *K* as a respondent though he had not appealed from the order, itself HAR NARAIN SINGH *v* KHARAG SINGH . . I. L. R., 9 All., 447

359 ———— *Erroneously making intervenor party to suit* —An error in allowing an intervenor to be made a party to the suit is one of procedure only, and is not a ground of special appeal, unless it is shown that the decision of the case was affected by such error NUNHOO MAHTOON *v* TEELOCO KOOER 18 W R., 313

CHANDRA DUTT [10 W. R., 108: 6 B L R., 526 note

361. ———— Misjoinder of parties— ...

the course by which the matter of the suit was brought before another Court than which would otherwise have had cognizance of it was calculated to produce error or defect in the decision on the merits and therefore a ground of special appeal GUNGA RAI *v* SAKEENA BEGUM 5 N. W., 72

362. ———— Death of party—*Filing plaint in name of dead person—Irregularity.*—Where a plaint was filed in the name of a deceased party of whose death the person filing the plaint was ignorant, and the heir and representative of the deceased was at once put upon the record as plaintiff in his room, the irregularity (if any) was held in special appeal to be immaterial and not such as the Court would take notice of GOLUCK CHUNDER DUTT *v* COURT OF WARDS . 10 W. R., 127

363 ———— Objection of non-joinder of parties—*Error causing wrong decision* —The objection of non-joinder of parties cannot be made a ground of special appeal unless the want of parties has caused a wrong decision to be given HEERA LALL CHOWDHRY *v*. BISTOO LALL CHOWDHRY [22 W. R., 288

SPECIAL OR SECOND APPEAL—*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

(*j*) REMAND.

364. ——— Order of remand irregularly made—*Error in law—Civil Procedure Code, 1859, s. 351.*—It is an error in law for a lower Appellate Court to remand a case except in accordance with s. 351 of the Civil Procedure Code. A special appeal will lie against a decree remanding a suit. NANABHAI NAROTOMDAS *v.* RAMSHET GOVINDSHET [6 Bom., A. C., 156

365. ——— *Remand of case under s. 351, Civil Procedure Code, 1859—Irregular procedure.*—A special appeal does not lie merely because the lower Appellate Court remanded a case under s. 351 of Act VIII of 1859, instead of calling for additional evidence under s. 355, without proof that the special appellant has been prejudiced. NOWCOWREE MUNDUL *v.* MOOKTA BIBEE [2 W. R., 181

Or instead of framing issues on which the case might be tried. JUGOBUNDHOO HALDAR *v.* SREENARAIN MITTER . . . 20 W. R., 188

But *see* RAM KANT PANDEY *v.* GUNESHEE KOONWUR . . . . . 6 W. R., 47

366. ——— *Improper remand under s. 351, Civil Procedure Code, 1859—Error in procedure.*—Where a lower Appellate Court, instead of keeping a case on its file and either calling for further evidence or remitting issues under s 354 of Act VIII of 1859, improperly remanded it under s. 351, but its decision on the merits was not prejudiced by the error in procedure, the High Court refused to interfere in special appeal. BULDEO PERSHAD *v.* GOLAB KHAN . . 6 N. W., 101

GHASI SINGH *v.* BUDH SINGH . 7 N. W., 193

367. ——— *Civil Procedure Code, 1859, s. 351.*—It does not necessarily follow, when a lower Appellate Court remands a suit under s. 351 of Act VIII of 1859 instead of s. 354, that the order of remand is void and reversable in special appeal. Where, however, a lower Appellate Court, directing certain persons to be made parties to the suit, erroneously remanded it under s. 351 for the trial of a particular issue,—*Held* that, if the case went back under s. 351, inasmuch as the error, by restricting the Court of first instance to that particular issue and thus leaving the finding of the lower Appellate Court on other portions of the case final, might have produced error in the lower Appellate Court's decision on the merits, the decision should be reversed and the lower Appellate Court directed to remand the case under s. 354. GUJRAJ SINGH *v.* BIJAI SINGH . . . . 6 N. W., 114

368. ——— Irregularity in remanding case—*Civil Procedure Code, 1859, ss. 352, 354.*—Where a Judge, instead of remanding a case under s. 352 of Act VIII of 1859, when the Munsif had not disposed of the case upon any preliminary point, ought to have disposed of it under s. 354, keeping the case on his own file, and ordering the Munsif, after taking the necessary evidence and deciding any issue fixed by him, to send up his finding with the evidence to his Court, and then proceeding to try the case as an appeal,—*Held* that the irregularity was not one which affected the merits of the case or the jurisdiction of the Court, so as to justify interference with the Judge's decision in special appeal. GUNGA MONEE DOSSEE *v.* ISSUR CHUNDER SHAHA [17 W. R., 465

369. ——— *Error in trial of case.*—In a suit for a pottah, the Deputy Collector having failed to take the evidence of certain witnesses produced by the plaintiff for examination, the lower Appellate Court remanded the case with a view to the evidence being taken. This was done, and the case was re-tried by the Deputy Collector, who again dismissed the plaint. On appeal the decision was reversed. *Held* that the Judge may have been so far in error, in that, while remanding the case, he did not direct the lower Court to send the case back to him with the additional evidence; yet, as the error did not interfere with the merits of the case or the jurisdiction of the Court (the evidence having been before the Judge in appeal), it would not warrant interference with his decision in special appeal. NUSSUROODDEEN HOSSEIN CHOWDHRY *v.* LALL MAHOMED PURAMANICK . 13 W. R., 234

370. ——— Improper dealing with remanded case—*Re-hearing and decision of case on remand for particular purpose.*—The Court of Appeal directed a remand to try the issue on a plea of payment. The lower Court determined the whole case over again. *Held* that it had no power to do more than try the issue referred, and that, on this ground, its decision might be set aside on special appeal. MOLTAN ALLEE *v.* SHEW BUKSH [Marsh., 603

(*k*) REVIEW.

371. ——— Order granting review—*Order admitting review to correct error or omission.*—Where a lower Court with materials before it comes to the conclusion that a review which has been applied for is necessary to correct an evident error or omission or for the ends of justice, and grants the application accordingly, the order admitting the review is not open to be questioned in special appeal. SAHEBJAN BIBEE *v.* SUFDUR ALI . . 22 W. R., 288

But when a review is admitted on no grounds, the order is open to question. KOLEEMOODDEEN MUNDUL *v.* HEERUN MUNDUL . . 24 W. R., 186

372. ——— *Admission of review on improper grounds.*—Where a review has been granted without proper ground, the High Court on special appeal can set aside the order and restore the former judgment. CHUNDER CHURN AUGGRODANY *v.* LOODUNRAM DEB . . 25 W. R., 324

SPECIAL OR SECOND APPEAL—*continued*

6 OTHER ERRORS OF LAW OR PROCEDURE—*continued*

373. ———— *Grant of review on improper or insufficient grounds* —Where a Court has granted a review, the High Court will not interfere on appeal, though the grounds for granting the review were improper or insufficient GURUMURTTI NAYUDU *v* PAPPA NAYUDU [1 Mad, 164

See FUZZUL HOSSEIN *v* ENAYET ALI KHAN [2 W. R, 268

374 ———— **Reviewing predecessor's judgment and reversing it on insufficient grounds** – Where a District Judge, as the lower

review ... DOSS *v* PROTAP CHUNDER SEN 23 W. R., 275

... doing so is not *per se* a ground of special appeal GHOLAM HOSSEIN *v* OKHOY COOMAR GHOSE [3 W. R., Act X, 169

... correct it when the case comes up before them again in a subsequent special appeal. SAKHO NARAIN KHANDALKAR *v* NARAYAN BHIKAJI KHANDALKAR [6 Bom, A C, 238

AKBUR ALI *v* MULLICK MUKHDOOM BUKSH [25 W. R, 63

(*l*) VALUATION OF SUIT

377. ———— **Error in valuation**—*Error not affecting decision or jurisdiction of Court* —An error of valuation, which does not affect the jurisdiction of the Courts in which a suit is tried, and does not lead to a defect in the decision on the merits, is not sufficient ground for interference in special appeal KISTO CHURN MOJOOMDAR *v* DWARKA NATH BISWAS 10 W. R., 32

378 ———— *Increase of costs to defendant* —*Semble*—That an error in the valuation of the plaintiff's claim, on account of which

379 ———— *Dismissal of*

although the appellant offered to supply additional stamps to make up the proper amount On special appeal the proper stamp duty having been paid, the High Court held that the course taken by the Civil Judge amounted to such a substantial error in the

... GAR *v*. MAHAMADALLY I AVUTAN . 5 Mad., 330

(*m*) WITNESSES.

... interfered with in special appeal unless shown to have been exercised illegally INDRO LOCHUN GHOSE *v* GRISH CHUNDER ROY CHOWDHRY [10 W R, 134

... orders as it thinks proper in regard to a party who disobeys its orders to attend and its directions do not form a ground of special appeal NARAIN DOSS *v* MAHARAJAH OF BURDWAN NARAIN DOSS *v* MAHTAB CHUNDER 10 W R, 174

382 ———— **Dismissal of suit on refusal of plaintiff to answer questions**—*Civil Procedure Code, 1859, s. 170* –The High Court will not interfere on appeal with the decree of the lower Court dismissing a plaintiff's suit (under s 170, Act VIII of 1859), on the ground of his refusing to answer a question material to the case when duly required to do so *Semble*—It might be otherwise had plaintiff since decree endeavoured to purge his contempt JESHTA RAMJI SHETT *v* AWAKER MULLANDEAGATA KUNHI . 3 Mad., 299

383 ———— **Improper procedure in summoning party as witness**—*Civil Procedure Code, 1859, s 170* —When a plaintiff was summoned as a witness and did not attend, and the first Court, instead of enforcing his attendance or proceeding to pass a decree against him under s 170, Act VIII of 1859, tried the case on the merits and gave the plaintiff a modified decree,—*Held* that the lower Appellate Court, instead of reversing the decision and dismissing the plaintiff's claim on the ground of non attendance, should have again summoned the plaintiff and then acted under s 170 KISTO COOMAR CHOWDHRY *v* GOBIND COOMAR [W. R., 1864, 133

384. ———— **Improper interference on appeal with order of lower Court on refusal of party to attend as witness**—*Civil Procedure Code, 1859, s 170* —The first Court having decreed against the special respondent on the ground

SPECIAL OR SECOND APPEAL—*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*continued.*

of his refusal to come forward and give evidence after being summoned by the special appellant, the lower Appellate Court was not authorized by law (with reference to s. 170, Act VIII of 1859) to come to a contrary decision, without insisting on the absentee's evidence being recorded, or giving any reasons for dispensing with it. BUKHSOOR *v.* HARUK CHAND SAHOO . . . . 1 W. R., 114

385. ——— Omission of witness to appear—*Auction-purchaser at sale in execution.*—In a case wherein lands were sold in execution, notwithstanding intervention, under s. 246, Code of Civil Procedure, by a plaintiff who claimed under a hibba, which was held by the lower Courts to be false, the High Court refused to interfere merely because the auction-purchaser had not appeared to give evidence. ABDOOL HUQ *v.* AMBUR ALI [8 W. R., 422

386. ——— Refusal of Munsif to fine recusant witness.—The refusal of a Munsif to inflict a fine upon recusant witnesses is no ground for special appeal. PRAN KRISTO DEO *v.* KALEE DOSS DEO . . . . . . 7 W. R., 480

387. ——— Refusal to allow witness to be called—*Discretion of Court.*—It is in the discretion of a Court of first instance, after the plaintiff's case is closed, to allow him to call further witnesses. There is no right of special appeal upon the point. RAKHAL DOSS MUNDUL *v.* PROTAP CHUNDER HAZRAH . . . 12 W. R., 455

388. Omission to record evidence of witnesses.—To enable an appellant in special appeal to succeed on the ground that the depositions of witnesses were not recorded, he must show that application was duly made that they should not be summoned, or that, being present, application was duly made for their examination. SURM RAE *v.* UDHMAN RAE . 2 N. W., 209

389. ——— Refusal of lower Courts to send back commission after its return unexecuted.—Where a commission to examine a witness on behalf of defendant had been returned unexecuted, and the defendant's petition to have it sent a second time was refused both by the first Court and the lower Appellate Court, the High Court in special appeal remanded the case for the issue of the commission, holding that the lower Appellate Court's refusal had been based on insufficient grounds. JHOTEE SINGH *v.* GOPAL SINGH . 23 W. R., 457

390. ——— Adjournment for attendance of witnesses—*Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court on second appeal.* On the day fixed for the hearing of a suit the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused, and the case was proceeded with. The plaintiffs' evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be delivered on the following day, the 31st December. On the day following the defendants produced certain witnesses and asked that they might be examined. This application was rejected, and judgment was subsequently delivered in favour of the plaintiffs. *Held per* PETHERAM, *C.J.*—That the omission to examine the defendants' witnesses on the 31st December was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully. *Per* GHOSE, *J.*—That although there was some doubt whether the Court on second appeal could interfere in a point of discretion, yet this doubt was not strong enough to justify an expression of opinion contrary to that arrived at by the Chief Justice. MONI LAL BANDOPADHYA *v.* KHIRODA DASI . . . . I. L. R., 20 Calc., 740

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY [I. L. R., 20 Calc., 745 note

(*n*) MISCELLANEOUS CASES.

391. ——— Final order in regular appeal—*Civil Procedure Code, 1859, ss. 342, 372—Question of fact—Exercise of discretion—Error in law.*—The term "decisions passed in regular appeal" in s. 372, Act VIII of 1859, might embrace orders rejecting or dismissing an appeal, although such orders were passed before an appeal was heard on the merits, and might not necessitate the preparation of a decree. GOPAL KHUNDEE RAO *v.* DEOKEE NUNDUN . . . 6 N. W., 173

392. ——— Appeal dismissed on default of appearance—*Refusal of postponement.*—Where an appellant is refused postponement, and his appeal is dismissed in his absence, the case must be looked upon as one of default, even though the Judge looked into the facts and found the appeal was not to be upheld. The appellant in such a case might apply for a re-hearing or for a review of judgment, but is not entitled to a special appeal. BULDEO MISSER *v.* AHMED HOSSEIN . 15 W. R., 143

393. ——— Refusal to give decree on terms—*Discretion of Court.*—Though it would have been more satisfactory if the lower Appellate Court, instead of declining to give plaintiffs a decree for possession of certain mortgaged lands on the ground that the sum tendered by them was insufficient to liquidate the mortgage-debt, had made a decree in favour of plaintiffs, contingent upon their paying such sum as should be found due, yet the plaintiffs had no strict right to such a decree, and it cannot be said that the lower Appellate Court had committed an error in law in refusing to make such a decree. BOISTUB DOSS KOONDO *v.* HUROO NARAIN HALDAR . . . 17 W. R., 408

SPECIAL OR SECOND APPEAL —*continued.*

6. OTHER ERRORS OF LAW OR PROCEDURE—*concluded*

omission of the Ameen or Judge to appropriate to every portion of the land which varies in quality its own rent is no ground of special appeal GOOROODOSS ROY *v* HURRONATH ROY . W R, 1864, 61

395 ——— **Irregularity in exercise of jurisdiction**—*Absence of error in decision*—A Collector's decree, which is right on the merits, cannot be set aside on appeal, merely because of an irregularity in the exercise of the jurisdiction which he had in the case CHUNDER KANT CHUCKERBUTTY *v* ELIAS 5 W. R, Act X, 29

396 ——— **Giving relief inconsistent**

397. ——— **Refusal to examine plaintiff's title on erroneous ground**—*Civil Proce-*

claimed when in fact the deed showed he was no party to it, this constitutes a defect "in the procedure and investigation of the case producing error in the decision of the case upon the merits" within Act VIII of 1859, s 372, and a special appeal will lie ABDOOZ SALAM *v.* IMRALOONISSA BEBEE [Marsh, 6: 1 Hay, 28

398 ——— **Failure to obtain certificate of administration after adjournment of case for that purpose**—*Dismissal of case—Debt due to deceased person—Suit by legal repre-*

[I. L. R., 5 All., 555

SPECIAL OR SECOND APPEAL —*continued*

7 PROCEDURE IN SPECIAL APPEAL

399. ——— **Filing memorandum of appeal**—*Copy of decree—Civil Procedure Code, 1877, ss 541 and 587*—The Code of Civil Procedure, Act X of 1877, does not require the appellant in second appeal to file a copy of the decree of the Original Court with the memorandum of appeal. PIRATHI SINGH *v* VENCATRAMANAYYAN [I. L. R, 4 Mad., 419

[W. R., F B, 146

On due cause being shown for delay FLOWEST *v* KOOTUB HOSSEIN [Agra, F B, 100: Ed 1874, 75

merely on the ground of non joinder, the District Judge *should not record any findings in the appellant's favour on the merits of the case*, and, if he does so, such findings will, on second appeal to the High Court, be expunged from the record NANDA LAL RAI *v* BONOMALI LAHIRI I. L R, 11 Calc, 544

402 ——— **Objections by respondent**—*Civil Procedure Code, 1859, s 348 (1882, s 561)*—S 348, Act VIII of 1859, was as applicable to special as to regular appeals NARAYAN AYYAR *v* LAKSHMI AMMAL . 3 Mad, 216

for enhancement of rent, where the tenant is appellant and seeks to reduce the amount, the respondents may show, on other points of law, that it ought to have been enhanced beyond that which the decree gave him HILLS *v* ISHORE GHOSE Marsh., 151

S. C ISHORE GHOSE *v* HILLS W. R., F. B, 48 [1 Ind. Jur, O. S, 25: 1 Hay, 350

Contra, MAKUDU RAVULLAN *v* MASTAN SAHIB [1 Mad, 102

404 ——— **Changing issues on special appeal**—A party was not allowed on special appeal to go behind the issues by which he was content to abide in the lower Court AHMED MUNDUL *v* SONAOOLLAH . . . . 8 W R, 5

405. ——— **Direction of trial of issue**—*Right of respondent to take objection—Civil Procedure Code, 1859, s 372, and Act XXIII of*

7. PROCEDURE IN SPECIAL APPEAL
—continued.

1861, s. 25.—Where an issue has been directed, and the finding and evidence returned, a special appellant cannot take an objection going to the merits which otherwise would not properly be open upon special appeal. S. 25 of Act XXIII of 1861 gives no rights inconsistent with s. 372 of Act VIII of 1859. NILAYATATCHI *v.* VENKATACHALAM MUDALI

[1 Mad., 250

406. ——— **Omission to determine material issue**—*Civil Procedure Code, 1877, s. 565, Applicability of.*—Where a Court of first appeal omits to determine a material issue of fact, the High Court as a Court of second appeal is not competent, under s. 565 of the Civil Procedure Code, to determine such issue itself, but should refer it for determination to the Court of first appeal. SHEO RATAN *v.* LAPPU KUAR . I. L. R., 5 All., 14

407. ——— **Payment of stamp duty where not tendered in Court below.**—Where an appellant has not tendered the stamp duty and penalty on a document which the Courts below have held to be insufficiently stamped, the High Court will not allow him to do so in special appeal. RAM KRISHNA GOPAL *v.* VITHU SHIVAJI . 10 Bom., 441

408. ——— **Ground taken for first time on appeal**—*Ground arising out of facts alleged and admitted.*—In special appeal a new ground may be taken if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court. KALIMOHAN CHATTERJEE *v.* KALI KRISHTO ROY CHOWDHRY

[2 B. L. R., Ap., 39 : 11 W. R., 183

409. ——— **Plea taken for first time on appeal**—*Facts stated in plaint necessary to support it.*—A plea may be taken in special appeal though not set out in the plaint, if the plaint did set out all the facts necessary to support the plea, and there was no omission calculated to mislead the Court. JUDOONATH MULLICK *v.* KALEE KRISTO TAGORE

[22 W. R., 73

410. ——— **Objection taken for first time in special appeal.**—Where in a suit under the Madras Local Boards Act in the Courts of first instance and first appeal no objection was taken to the frame of the suit with reference to the provisions of s. 27,—*Held* that the defendants should not be permitted on second appeal to raise such objection to the frame of the suit. PRESIDENT, TALUKH BOARD, SIVAGANGA *v.* NARAYANAN . I. L. R., 16 Mad., 317

411. ——— **New point raised in second appeal**—*Question of law.*—The High Court will allow, on second appeal, a new point to be raised for the first time, provided it is purely a question of law arising on the findings of the Courts below, and not affected by any facts outside those findings. NAGESH *v.* GURURAO . . I. L. R., 17 Bom., 303

412. ——— **Point of law raised for first time in second appeal.**—In a suit by a mortgagee for possession of the mortgaged land, the mother of the deceased owner claimed to remain in possession of it in virtue of her right to maintenance. At the hearing of the second appeal, a claim was made on her behalf not merely to maintenance, but to a share in the property as mother of the last owner. The point had not been taken in the lower Courts, nor was it one of the grounds of appeal. *Held* that it could not be taken for the first time in second appeal. It set up a new right differing in kind from that asserted throughout the trial, and not differing merely in degree, as was the case in *Nagesh* v. *Gururao, I. L. R., 17 Bom., 303.* RACHAWA *v.* SHIVAYOGAPA

[I. L. R., 18 Bom., 679

413. ——— **New point**—*Discretion of Court.*—On second appeal the appellant should not be allowed to raise an entirely new point if it is one for the right determination of which it is necessary to go into evidence which has not been produced in the lower Courts, or unless it is a pure point of law going to the question of the jurisdiction of the lower Courts and capable of being determined without the consideration of any evidence other than that on the record, and even if it falls within the above exception, it is purely discretionary with the Court whether to consider it or not. FAKIR CHAND AUDHIKARI *v.* ANUNDA CHUNDER BHUTTACHARJI . I. L. R., 14 Calc., 586

414. ——— **Objection that mesne profits ought to have been settled in execution and that no suit lies**—*Suit for recovery of mesne profits from person who has taken possession under a decree which is subsequently reversed on appeal—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s. 244.*—A landlord sued his tenant for arrears of rent, and obtained a decree for a certain amount and a declaration that, if the amount were not paid within fifteen days, the tenant should be ejected under s. 52, Act VIII of 1869. The amount was not paid, and the landlord executed the decree and obtained possession. The tenant appealed and succeeded in getting the decree set aside, and the amount found due from him for arrears by the first Court was reduced, and a decree made directing that, if the reduced amount were not paid within fifteen days, he should be ejected. He paid the amount found due by the Appellate Court within the fifteen days and recovered possession of his holding. He then brought a suit in the Munsif's Court to recover mesne profits from his landlord for the time he was in possession after the execution of the first Court's decree. It was contended on second appeal that the suit would not lie, as the matter might and should have been determined in the execution department under s. 244 of the Civil Procedure Code. *Held* that, as the suit was instituted in the Munsif's Court, and the Munsif, under the circumstances of the case, was the officer who, in the first instance, would have had to determine the matter in the execution department, there was at most only an error of procedure and no exercise of jurisdiction by the Munsif, which he did not possess, and that, upon the

SPECIAL OR SECOND APPEAL
—*continued*

7 PROCEDURE IN SPECIAL APPEAL
—*continued*

authority of the decision in *Purmessuree Pershad Narain Singh* v *Jankee Kooer, 19 W. R., 90,* this could not be made a ground of objection on appeal *Held* also that, the point being one that was not raised in the pleadings or before either of the lower Courts, and being a point which went exclusively to the jurisdiction of the Court, it could not be raised on second appeal. AZIZUDDIN HOSSEIN *v.* RAMA NUGRA ROY . I. L R., 14 Calc., 605

415 —— —— Objection to parties—*Non-joinder of parties*—*Held* by MUTHUSAMI AYYAR, and BRANDT, JJ (KERNAN, J, dissenting), that the objection as to non-joinder of parties is not essential, but merely formal, and weight should not be attached to it when it is first taken on second appeal. MOIDIN KUTTI *v* KRISHNAN I L R, 10 Mad, 322

416 ———— Objection taken for first time on appeal—*Necessity of notice to quit*—*Objection as to want of parties*—*Practice*—*Suit for specific performance*—An objection as to the necessity of notice to quit is one which may be taken

of practice DODHU *v* MADHAVRAO NARAYAN GADRE . I. L R., 18 Bom., 110

417. ———————— Where an objection was taken in the first Court that a notice to quit

beat of drum under rule 3 framed by the Local Government under the provisions of the Bengal Tenancy Act, it was *held* that the objection so taken could not be entertained in second appeal LOKE NATH GOPE *v.* PETAMBAR GHOSE 3 C W. N., 215

418. ———— Question of limitation.—Where the question of limitation was raised for the first time in second appeal,—*Held* that it could not be decided in favour of the plaintiff SHIBAPA *v* DOD NAGAYA . I L. R., 11 Bom., 114

419. ———————— *Plea raised at the hearing which was not taken in the memorandum of appeal*—*Practice.*—A plea that the memorandum of appeal in the lower Appellate Court was insufficiently stamped, and that such deficiency was not made good within the period of limitation, is not a plea which can be raised at the hearing of a second appeal, when it has not been taken in the memorandum of appeal. RAM KISHEN UPADHIA *v* DIPA UPADHIA . . I. L. R, 13 All., 580

420. ———————— *Civil Procedure*

randum of appeal to the effect that the respondents'

SPECIAL OR SECOND APPEAL
—*continued*

7 PROCEDURE IN SPECIAL APPEAL
—*continued.*

and under the circumstances did not think it necessary to enter into it *Ram Kishen Upadhia* v. *Dipa Upadhia, I L R, 13 All, 580,* approved. AHMAD ALI *v* WARIS HUSAIN [I. L R., 15 All., 123

Court, nor alluded to in the lower Appellate Court LALLA JOWAHIR LALL PANDEY *v* COURT OF WARDS [17 W. R., 214

not raised before the Court on a previous occasion, when it passed an order of remand DARIMBA DEBIA *v* NILMONEE SINGH DEO 15 W. R., 180

423. ———— Setting up new case—*Pleas and objections raised for first time in special appeal*—Parties are not entitled in special appeal to set up a new case, involving an argument entirely different from that raised in the Courts below, and a state of facts entirely inconsistent with their statements there BUNSEE LALL *v* AOLADH AHSAN 22 W R, 553

424. ———————— *Raising new issue*—*Changing original allegations*—A party cannot be permitted to change in special appeal the allegations on which he went to trial in the Courts below, and to raise altogether a new issue SHIU DAS NARAYAN SINGH *v* BHAGWAN DUTT [2 B L R, Ap., 15: 11 W. R., 10

425. ———————— *Changing ground of action*—A plaintiff suing for redemption, on the ground of holding in right of dower, cannot in special appeal claim to redeem on the ground of being heir to the mortgagor RAHOMAN *v.* FUZULOONISSA [W. R., 1864, 326

on that ground in the Court below KRIPANATH MOJOOMDAR *v* SARODA CHOWDHRAIN [1 W. R, 283

self-acquired property, he cannot in special appeal

SPECIAL OR SECOND APPEAL
—*continued.*

7 PROCEDURE IN SPECIAL APPEAL
—*continued.*

ask for a declaration of his title to a moiety of the property as a member of a joint Hindu family. DHUN KRISTO ROY *v.* HURO CHUNDER ROY [5 W. R., 197

428. ———— *Claim through widow in right of dower—Allegation of right by inheritance.*—The defendants in the Court below unsuccessfully claimed to retain possession of some land under a kobala from a Mahomedan widow, who was alleged by them to have been absolutely entitled thereto under her right of dower. *Held* that the defendants could not, in special appeal, set up for the first time that the widow was entitled to a share by inheritance, if not as denmohur, no case of that kind having been made in the Courts below, and no inquiry asked for into the state of the family, or whether any and what share came to the widow. AMBIKA CHARAN DUTT *v.* NADIR HOSSEIN [2 B. L. R., A. C., 258

S. C. UMBIKA CHURN DUTT *v.* NADIR HOSSEIN [11 W. R., 133

429. ———— **Rules for special appeal**—*Sufficiency of evidence on the record, Question as to.*—A case which is tried in special appeal is subject to all rules provided for regular appeals so far as the same may be applicable. The question whether evidence on the record is legally or reasonably sufficient to support the findings of the lower Appellate Court may be dealt with in special appeal without a remand or re-hearing. JOY RAM ROY *v.* OMRAO ROY . . . . . . 12 W. R., 431

430. ———— **Omission after favourable finding of law to appeal against adverse finding of fact in lower Court**—*Power of High Court reversing judgment on law to decide on fact without remand.*—The Court of first instance found against the defendant on a matter of fact, but decreed in his favour on a point of law; and on appeal by the plaintiff the defendant omitted to file a memorandum of objections to the adverse finding of fact of the Court of first instance. The Appellate Court, without going into the question of fact, confirmed the decree of the Court of first instance on the point of law. *Held* that the High Court, in special appeal, could under these circumstances give judgment in favour of the plaintiff without a remand. WAIGANKAR *v.* WADEKAR . . . 5 Bom., A. C., 194

431. ———— **Power of High Court to draw inference of fact from evidence.**—The High Court is not at liberty in a special appeal to draw any inference of fact from the evidence in the case. DWARKADAS LALUBHAI *v.* ADAM ALI SULTAN ALI . . . . . 3 Bom., A. C., 1

432. ———— **Mode of obtaining record of facts where ground of appeal is misconduct of Judge in not hearing a pleader.**—The Court on special appeal is bound to take the facts from the Judge's statement. Where, therefore, a party desires or intends to make the misconduct of a Judge a ground of appeal to the High Court, he ought always to draw the Judge's attention to that matter, either by presenting a petition or otherwise, so that a proper record may be at once made of the facts which he desires to establish in appeal. RAM KOOMAR KYBURTO DASS *v.* SONATUN DASS PORAMANICK . . . . . 3 C. L. R., 23

433. ———— **Appeal to Chief Court, Punjab**—*Civil Procedure Code, 1882, s. 584—Questions of fact.*—An appeal from an Appellate Court to the Chief Court of the Punjab is not limited, as such appeals are under the Civil Procedure Code, 1882, s. 584; but evidence may be dealt with, and questions of fact are open for decision. BUDHA MAL *v.* BHAGWAN DAS [I. L. R., 18 Calc., 302

434. ———— **Treatment by High Court of finding of fact**—*Suit for wrongful dismissal.*—The finding of the lower Courts upon a question of whether there was sufficient ground for the dismissal of a pagoda hereditary servant by the dharmakarta must be treated by the High Court on special appeal as a conclusive finding upon a matter of fact, unless it be supported by no evidence whatever. KRISTNASAMY TATACHARRY *v.* GOMATUM RANGACHARRY . . . . 4 Mad., 63

435. ———— **Power of High Court as to facts**—*Appeal from order of remand—Civil Procedure Code, 1877, s. 562, and s. 588, cl. 28.*—On an appeal from an order under s. 562 of the Civil Procedure Code remanding the case, the High Court cannot consider the facts on which the lower Appellate Court passed the order of remand. All that it can do under s. 588, cl. 28, is to consider whether, on the findings of fact by the lower Appellate Court, that Court was right in remanding the case. NOIMOLLAH PRAMANICK *v.* GRISH NARAIN MOONSHEE . . . I. L. R., 8 Calc., 674

436. ———— **Effect on special appeal of recording further evidence by Appellate Court**—*Right to appeal on facts.*—A special appeal is not converted into a regular appeal because the Judge, sitting as a Court of appeal, recorded further evidence under s. 356, Act VIII of 1859, or pronounced a judgment on the evidence recorded, which had not been considered by the first Court as described in s. 353. LALLA HEERA LAL *v.* GOUREE BYJNATH PERSHAD . . . 4 W. R., 43

437. ———— *Civil Procedure Code, 1882, s. 568—Right to go into facts on appeal.*—The provision in s. 568 of Act XIV of 1882 as to an Appellate Court recording its reasons for admitting additional evidence is directory merely, and not imperative. Where the first Court of Appeal has admitted additional evidence, the hearing in the second Court of Appeal will not be treated as a first appeal, so as to allow the pleaders to go into the facts. GOPAL SINGH *v.* JHAKRI RAI [I. L. R., 12 Calc., 37

SPECIAL OR SECOND APPEAL—*continued*

7. PROCEDURE IN SPECIAL APPEAL—*continued*

438. ——— *Right to examine evidence taken by lower Appellate Court under s 355, Civil Procedure Code, 1859*—The High Court is not entitled in special appeal to examine the evidence of a witness summoned by the lower Appellate Court under Act VIII of 1859, s 355, which was not before the first Court, nor treat the appeal as a regular appeal MAHOMED KAMIL *v* ABDOOL LUTEEF 23 W. R., 51

Reversing decision in ABDOOL LUTEEF *v* MAHOMED KAMIL 20 W. R., 369

439 ——— **Right to go behind order of reman**
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review, and, not having done so, he was not entitled to ask the Court to go behind that order and consider whether it was wrong with reference to the latter case NURSINGH ROY *v* ANDERSON [19 W. R., 125

See RAMKUVARBAI *v*. DAMODHAR NARBHERAM [6 Bom, A. C, 146

440 ——— **Objection to previous order in the case to be taken in memorandum of appeal**—*Civil Procedure Code, ss 562, 591*—Unless such objection is taken in his memorandum of appeal, it is not open to an appellant at the hearing of an appeal from the decree to question the validity of an order of remand previously made in the case under s 562 of the Code of Civil Procedure TILAK BAJ SINGH *v* CHAKARDHARI SINGH [I. L. R., 15 All, 119

441. ——— **Order adding defendant**—*Civil Procedure Code (1882), s 32* Where an order adding a defendant under s 32 of the Code of Civil Procedure was not appealed against and no objection was taken thereto in the memorandum of appeal from the decree in the suit in which it was passed, an oral objection taken in appeal to such order was disallowed. *Tilak Raj Singh* v *Chakardhari Singh, I L R, 15 All., 119*, referred to BANSI LAL *v* RAMJI LAL [I. L. R, 20 All., 370

442. ——— **Power of High Court to deal with evidence**—*Necessity for remand—Evidence of existence of legal necessity*—*Held* by PEACOCK, *C J*, that the High Court has the power in special appeal, before remanding a case, to see whether there is any evidence on the record which would warrant a contrary finding to that already come to by the Judge below, and that it would be

be reversed upon special appeal as being a finding without any evidence in support of it. *Held, contra*, by BAYLEY, *J*, that, under s 372, Act VIII of 1859,

443. ——— *Civil Procedure Code, 1882, ss 565, 566—Determination of case by High Court*—In a suit for pre emption, based on the wajib-ul-urz of a village, the Court of first instance dismissed the claim on the ground that no right of pre-emption had been proved to exist in the village The lower Appellate Court, dissenting from

in error in remanding the case under s 562 of the Code, that his order must so far be set aside, and that he should proceed under s 565 or s 566 as might

In second appeal by the defendants the High Court was of opinion that the Judge had disposed of the case upon a condition of things which the plaintiffs

parties All the evidence necessary to the determination of the case was on the record. *Held per* PETHERAM, *C J*, and OLDFIELD and TYRRELL, *JJ*,

if the evidence for answering this question was already on the record, and that, in such a case, the question need not be referred to the Court of first appeal *Bal Kishen* v *Jasoda Kuar, I L R, 7 All, 765*, referred to. *Per* STRAIGHT and BRODHURST, *JJ*, *contra* *Bal Kishen* v. *Jasoda Kuar*,

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—continued.

7. PROCEDURE IN SPECIAL APPEAL
—continued.

I. L. R., 7 All., 765, referred to. DEOKISHEN *v.* BANSI . . . . I. L. R., 8 All., 172

444. ———— Second appeal from order of remand—*Civil Procedure Code, s. 562—Effect of findings of facts and findings of law.*—On an appeal from an order of remand under s. 562 of the Code of Civil Procedure, the High Court is bound to accept the findings of fact of the Court which made the remand, that Court being a Court of first appeal, provided that there is evidence to support them; but where the High Court has decided a question of law in an appeal from an order under s. 562 of the Code, that decision of the question of law will be final for all purposes in the suit and in any appeal which may subsequently be made to the High Court. *Deo Kishen* v. *Bansi, I. L. R., 8 All., 172,* referred to. GAURI SHANKAR *v.* KARIMA BIBI

[I. L. R., 15 All., 413

445. ———— Appeal from order of an Appellate Court—*Civil Procedure Code (1882), ss. 562, 588—Findings of fact of the Court below.*—In an appeal from an order of an Appellate Court the High Court is bound to accept, as in a second appeal from a decree, the findings of fact arrived at by the lower Appellate Court. *Gauri Shankar* v. *Karima Bibi, I. L. R., 15 All., 413,* approved. TIKA RAM *v.* SHAMA CHARAN . . I. L. R., 20 All., 42

446. ———— Determination of issues of fact by High Court—*Civil Procedure Code, ss. 565, 566, 587.*—*Held* by the Full Bench that s. 587 of the Civil Procedure Code does not make ss. 565 and 566 applicable to second appeals, so as to enable the High Court, in cases where the lower Appellate Court has omitted to frame or try any issue or to determine any essential question of fact, to itself determine the same upon the evidence on the record, but the High Court in such cases must remit issues for trial to the lower Appellate Court. *Balkishen* v. *Jasoda Kuar, I. L. R., 7 All., 765,* and *Deokishen* v. *Bansi, I. L. R., 8 All., 172,* overruled on this point. GIRDHARI LAL *v.* CRAWFORD . . I. L. R., 9 All., 147

447. ———— Power of High Court to look into ground for admitting appeal after time.—It is competent to the High Court in special appeal to look into the grounds which a Judge has given for admitting an appeal after the lapse of the prescribed time. On appeal to the High Court against the decree of a subordinate Court, everything which preceded that decree as an act of Court is open to revision. MOWRI BEWA *v.* SURENDRA NATH ROY

[2 B. L. R., A. C., 184: 10 W. R., 178

**448. ———— *Limitation Act (XV of 1877), s. 5, sch. I.*—The High Court, sitting on second appeal, has power to look into the grounds which a Judge has given for admitting an appeal after the lapse of the period allowed by the Limitation Act. *Mowri Bewa* v. *Surendra Nath Roy, 2 B. L. R., A. C., 184,* followed. CHUNDER DOSS *v.* BOSHOON LALL SOOKUL

[I. L. R., 8 Calc., 251: 11 C. L. R., 177

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—continued.

449. ———— Power of High Court to vary order for execution—*Giving relief not asked for.*—The High Court in second appeal should not vary the order for execution which had been passed in such a way as to give the decree-holder relief for which he did not ask. PROTAP CHUNDER DOSS *v.* PEARY CHOWDHRAIN

[I. L. R., 8 Calc., 174: 9 C. L. R., 453

450. ———— Decrees made without jurisdiction—*Suit cognizable by Small Cause Court—Order sending case on terms to Small Cause Court.*—Where the decisions of the lower Courts were found, in special appeal, to have been without jurisdiction, and the suit to be cognizable by the Small Cause Court, the High Court made an order sending the plaint to the Small Cause Court for trial, upon the appellant (plaintiff) paying within three months all the costs of the litigation. DHUN MONEE CHOWDHRAIN *v.* WOOMA CHURN ROY

[23 W. R., 445

451. ———— Objections under s. 567 raised for the first time in second appeal by plaintiffs—*Practice—Remand by lower Appellate Court under Civil Procedure Code, s. 556.*—Objections which might have been, but were not, made under s. 567 of the Civil Procedure Code in a lower Appellate Court to the findings on remand of the Court of first instance, cannot be raised for the first time as grounds of second appeal from the lower Appellate Court's decree. MUHAMMAD ABDUL HAI *v.* SHEO BISHAL RAI . I. L. R., 10 All., 28

452. ———— Filing one appeal from four separate decrees—*Amendment of appeal.*—In execution of a decree in a District Munsif's Court, certain property having been sold, a balance, after satisfying the decree, remained in favour of the judgment-debtor *X*. After the date of sale, but before the whole of the purchase-money had been paid into Court, *X* applied to the Court by petition, praying that the amount due to him might be paid to *A*, to whom, he alleged, he had assigned it. Before any order was made on this petition, *B*, *C*, *D*, and *E*, in execution of separate decrees against *X*, attached the sum in Court. The District Munsif ordered that *B*, *C*, *D*, and *E* should be paid before *A*. *A* brought a suit against *B*, *C*, *D*, and *E* in another District Munsif's Court for a declaration that he was entitled to the money and to set aside the said order. The Munsif set aside the order and declared the plaintiff to be entitled to the amount. *B*, *C*, *D*, and *E* severally appealed against this decree, and the District Court passed a decree in each appeal, dismissing *A*'s suit. *A* presented one second appeal, making *B*, *C*, *D*, and *E* parties thereto, against the four decrees of the District Court. *Held* that *A* was bound to file a separate appeal against each of the decrees passed by the District Court; he was, however, allowed by the Court to amend his second appeal and file three more second appeals. CHATHU *v.* KUNSHAMED . I. L. R., 11 Mad., 280

453. ——— **Change of pleading in appeal**—*Practice*—The plaintiff, alleging himself to be joint in estate with *A*, his granduncle, sued to set aside an absolute gift of the house in suit made by *A* in favour of his wife, as also the subsequent sale of the house by the wife to the defendant. The lower Appellate Court finding that *A* was separate

from that which was originally put forward and tried, the appeal should be dismissed KANHIA *v* MAHIN LAL . I. L. R., 10 All., 495

454. ——— **Omission to examine wit-**

witnesses whom the plaintiffs had summoned were not examined The defendant appealed to the District Judge At the hearing of the appeal the plaintiffs did not inform the Judge that some of their witnesses had not been examined, nor did he become otherwise aware of the fact. He reversed the lower Court's decree, being of opinion, on appeal, that the plaintiffs' evidence had not proved their case The plaintiffs appealed to the High Court, and contended that the decree of the lower Appellate Court should be set aside, in order that the excluded evidence might be taken *Held* that there was no sufficient reason,

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order to have a chance of a second trial GULAM *v* BADRUDIN . . . I. L. R., 18 Bom., 336

455. ——— **Defective judgment of Appellate Court, reversing Munsif's decision on credibility of witnesses**—*Practice*—*Procedure—Judgment, Form of*—Case in which the High Court on special appeal, being of opinion that the judgment of the District Judge reversing that of the Munsif on the credibility of the witnesses did not fulfil the conditions that a judgment reversing

case
PUR-

, 256

456. ——— **Objection to suit on ground of want of certificate**—*Suit under Dekkan Agriculturists' Relief Act*—An objection to a suit under the Dekkan Agriculturists' Relief Act on the ground that a proper certificate had not been obtained could, it was held, be taken for the first time in second appeal, as it was an objection affecting the jurisdiction of the Courts below NYAMTULA *v.* NANAVALAD FARIDSHA I. L. R., 13 Bom., 424

457. ——— **Change in nature of suit**

division as alleged One of the members of the family who was in possession of the property to which the sale-deed related did not join in executing it *Held* that the plaintiffs, having failed to prove *division as alleged, were not entitled in second appeal* to have their suit treated as a suit for partition MUTTUSAMI *v* RAMAKRISHNA [I. L. R., 12 Mad., 292

458. ——— **Powers of Appellate Court**—*Question of fact—Civil Procedure Code, 1882, ss 584, 585*—The limitation to the power of the

GHOSE *v* MOHENDRANATH PURKAIT [I. L. R., 17 Calc., 291
L. R., 16 I. A., 233

459. ——— **Objection taken for first time on appeal**—*Misjoinder of causes of action—Civil Procedure Code, s 44*—Where an objection under s 44 of the Code of Civil Procedure as to misjoinder of causes of action was raised for the first time on appeal, the High Court on second appeal declined to entertain it *Dhondiba Krishnaji Patel* v *Ramchandra Bhagvat, I L R, 5 Bom., 554*, followed MAULA *v* GULZAR SINGH [I. L. R., 16 All., 130

460. ——— **Objection to jurisdiction on ground of wrong valuation of suit**—*Suits Valuation Act (VIII of 1889), s. 11*—The High Court held that it was not at liberty to entertain an objection taken for the first time on second appeal that the suit was not within the pecuniary limits of the District Munsif's jurisdiction, as it appeared on the merits that the appellant had not been prejudiced MUTHUSAMI MUDALIAR *v* NALLAKULANTHA MUDALIAR I. L. R., 18 Mad., 418

461 ——— **Objection taken for first time in second appeal that preliminaries to suit had not been taken**—*Practice*—In a suit for a declaration of the plaintiffs' right to have their names registered as purchasers, an objection having been raised, in second appeal, that the Court had no jurisdiction to entertain the suit, as the plaintiffs had not previously asked the Collector to place them on the register,—*Held* that

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—*continued.*

7. PROCEDURE IN SPECIAL APPEAL
—*continued.*

this circumstance was not necessary to give jurisdiction, although it might be a reason for treating the suit as premature. That objection, however, being taken for the first time in second appeal, was disallowed. BHIKAJI BAJI *v.* PANDU
[I. L. R., 19 Bom., 43

462. ———— **Objection based on point of law.**—An objection based upon a point of law may be made in second appeal, provided it does not involve the taking of any additional evidence on matters of disputed facts. GAVDAPPA *v.* GIRIMALLAPPA . . . I. L. R., 19 Bom., 331

463. ———— **Objection taken on appeal from final decree to order of remand not appealed from.**—The contention that a map was admissible in evidence was held to be open to the appellant, on second appeal, although he had not appealed against an order of remand made by the lower Appellate Court, rejecting the map as not being admissible. *Savitri* v. *Ramji, I. L. R., 14 Bom., 232,* and *Rameshur Singh* v. *Sheodin Singh, I. L. R., 12 All., 510,* followed. KANTO PRASHAD HAZARI *v.* JAGAT CHANDRA DUTTA
[I. L. R., 23 Calc., 335

464. ———— **Offer to pay stamp duty and penalty in second appeal not allowed.**—An instrument which is not duly stamped will not be admitted on second appeal on payment of stamp and penalty when there is no evidence that the stamp and penalty were tendered and refused on the hearing of the first appeal. *Ramkrishna Gopal* v. *Vithu Shivaji, 10 Bom., 441,* referred to. LAKSHMANDAS RAGHUNATHDAS *v.* RAMBHAU MANSARAM . . . . I. L. R., 20 Bom., 791

465. ———— **Wrong issue framed by lower Court**—*Finding in judgment on the point raised by correct issue—Ground for remand.*—Where the lower Appellate Court framed a wrong issue for decision, but it appeared from its judgment that there was a finding on the point which would have been raised if the correct issue had been framed, the High Court in second appeal refused to remand the case for a new finding on that issue. VISHNU RAMCHANDRA *v.* GANESH APPAJI CHAUDHARI
[I. L. R., 21 Bom., 325

466. ———— **Amendment of plaint by putting new plaintiff on the record on second appeal.**—Where plaintiffs had sued as executors by implication under a will which provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator, which adoption had been made,—*Held,* under the circumstances of the case, the plaint should be amended on second appeal by substituting the adopted son as plaintiff with one of the original plaintiffs as his next friend. SESHAMMA *v.* CHENNAPPA
[I. L. R., 20 Mad., 467

467. ———— **Apportionment of mortgage-debt**—*Question of apportionment first raised in second appeal—Practice.*—A plaintiff, who had purchased part of certain mortgaged property and sued for possession, obtained a decree ordering that he should get possession on payment of the whole mortgage-debt. He did not in the lower Courts ask that the mortgage-debt should be apportioned, but did so in second appeal to the High Court. Under the circumstances, the High Court refused to interfere with the decree. The plaintiff had a remedy by suit for contribution. YADAO BABAJI SURYARAV *v.* AMBO . . . I. L. R., 21 Bom., 567

468. ———— **Appeal to lower Appellate Court by respondent in High Court insufficiently stamped**—*Court Fees Act (VII of 1870), s. 10.*—Where it was discovered in second appeal in the High Court that the respondent, when appellant in the lower Appellate Court, had not paid a sufficient court-fee on his memorandum of appeal in that Court and up to the date of the hearing of the appeal in the High Court, though called upon to do so, had not made good the deficiency, it was *held* that the proper procedure was not to dismiss the respondent's appeal to the lower Appellate Court under s. 10 of the Court Fees Act, but to stay the issuing of the decree, if any, of the High Court in favour of the respondent until such time as the additional court-fee due by him might be paid. NARAIN SINGH *v.* CHATURBHUJ SINGH
[I. L. R., 20 All., 362

469. ———— **Objection as to improper admission of document in evidence.**—An objection that a document which *per se* is not admissible in evidence has been improperly admitted in evidence cannot be entertained for the first time in second appeal. *Miller* v. *Madho Das, I. L. R., 19 All., 76: L. R., 23 I. A., 106,* distinguished. GIRINDRA CHANDRA GANGULI *v.* RAJENDRA NATH CHATTERJEE . . . 1 C. W. N., 530

SPECIAL COMMISSIONER.

———— **Register prepared by**—

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[I. L. R., 22 Calc., 112

SPECIAL COMMISSIONERS.

———— **Jurisdiction**—*Beng. Reg. III of 1828—Release of resumed lands—Mesne profits.*—In 1855 the Privy Council decided against the right of the Bengal Government to resume and re-assess the ghatwali lands in the zamindari of Kurruckpore. In 1860 the Sudder Court, acting as Special Commissioners under Regulation III of 1828, at the instance of the zamindar, directed the release of the resumed lands, but did not decide as to the right to the mesne profits which the Government had received from the ghatwals during the period of resumption, deeming this question beyond their competency as Special

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est Leelanund Singh *v* Government of Bengal 1 W R, P C, 20 9 Moore's I. A., 479

SPECIAL COURT AT RANGOON

See Appeal in Criminal Cases—Acts—Burma Courts Act
[I L R., 4 Calc, 667

SPECIAL DAMAGE

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——— Allegation of—

See Cases under Jurisdiction of Civil Court—Abuse Defamation and Slander

See Cases under Jurisdiction of Civil Court—Public Ways, Obstruction of

See Cases under Right of Suit—Obstruction to Public Highway

See Cases under Slander

SPECIAL JUDGE

See Appeal—Acts—Bengal Tenancy Act I L R., 17 Calc, 326

See Bengal Tenancy Act s 10?
[I. L R 22 Calc, 244

See Bengal Tenancy Act s 108
[I. L. R, 21 Calc, 521

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[I L. R, 14 Bom, 387
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See Dekkan Agriculturists' Act, s 3
[I L R., 12 Bom., 684
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I. L R., 19 Bom, 286
I. L R, 22 Bom, 520
I. L R, 23 Bom, 321

See Review—Ground for Review
[I L R, 15 Bom, 650

See Review—Power to Review
[I. L. R, 19 Bom, 116
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——— Order of—

See Special or Second Appeal—Orders subject or not to Appeal.
[I. L. R, 16 Calc, 596
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I L R, 18 Bom, 347
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I L R, 26 Calc, 556

SPECIAL LEAVE TO APPEAL

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SPECIFIC APPROPRIATION.

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[2 B. L R., O C, 56

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See Injunction—Special Cases—Breach of Agreement
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See Management of Estate by Court
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See Parties—Parties to Suits—Contracts, Suits on
[I L R., 6 Bom., 177
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[1 B. L. R., F. B., 58
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I. L. R., 13 Mad., 308
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See CASES UNDER REGISTRATION ACT, 1877, s. 77 (1866, s. 83).

See SPECIFIC RELIEF ACT, s. 27.
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See VENDOR AND PURCHASER—BILLS OF SALE . . 2 B. L. R., P. C., 111

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 17 Calc., 919

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See VENDOR AND PURCHASER—TITLE.
[I. L. R., 15 Bom., 657

——— of agreement to refer to arbitration.

See CONTRACT ACT, s. 28.
[I. L. R., 1 Calc., 42, 466

——— of contract to give in marriage.

See INJUNCTION—UNDER CIVIL PROCEDURE CODES . I. L. R., 1 Calc., 74

1. GENERAL CASES.

1. ——— Remedies for breach of contract—*Suit for damages.*—A party failing to perform his contract may be sued, at pleasure of the other party, either for specific performance or for damages. MUNNEE DUTT SING *v.* CAMPBELL
[12 W. R., 149

2. ——— Requisites to entitle party to performance—*Ability of plaintiff to perform his part of agreement—Absence of default.* A Court of equity will not decree specific execution of an agreement in favour of a party who is not competent to perform his part of the agreement. To entitle a party to specific performance, he must show that there has been no default on his part, and that he has taken all proper steps towards performance on his own part. BUNGSEEDHUR MULLICK *v.* CALCUTTA AUCTION COMPANY . . 1 Hyde, 45

SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*continued.*

RAM TUNOO KOONDOO *v.* MULLICK DOSSEE
[14 W. R., 338

3. ——— *Readiness to carry out agreement.*—One who asks the Court for a decree for specific performance of an agreement must show that he is willing and able to carry it out in all its material parts so far as he is concerned, and also that no act of his own in relation to the agreement has in any material degree damnified his opponent. He cannot select one part of the agreement for breach and another for performance. He must be prepared to carry out the entire of his own part of the contract before he can call upon his adversary, through the instrumentality of the Court, to specifically execute the latter part of the agreement. VISHVANATH ATMANARAM *v.* BAPU NARAYAN . 1 Bom., 262

4. ——— *Absence of delay in coming before the Court.*—Parties seeking specific performance of a contract should come to the Court for relief within a reasonable time. SAM *v.* APPUNDI IBRAHIM SAIB . . . . . 6 Mad., 75

5. ——— *Absence of laches—Right to damages.*—A suit for specific performance of a contract to sell land will not lie if the plaintiff neglects to enforce his rights for a long time (in this case three years) after his rights under the contract for sale accrued, and if he does not act up to a condition precedent to the sale to him. If he has any claim at all, it would be for damages against the person breaking the contract for loss sustained by the non-fulfilment thereof. PURREAG SINGH *v.* KHEER SINGH . . . . . 8 W. R., 280

6. ——— Right to specific performance—*Lapse of time—Agreement to compensate for mesne profits due—Surrender of land charges.*—The result of a long-pending litigation was that the defendants were directed to pay wasilat for certain lands which they had possessed under an invalid lakhiraj claim. They subsequently entered into a compromise with the plaintiff, their zamindar, and agreed that, if they defaulted in rent, or if the lands became khas of the zamindar, or were by any means to be alienated, the defendants would point out the lands, or, on failure to do this, would pay damages for the loss of the same. *Held* that lapse of time and the surrender of the lands were no impediment to the Court granting relief to the plaintiff in the shape of a decree for specific performance. PROTAP CHUNDER SINGH *v.* GOOROO DOSS ROY. PROTAP CHUNDER SINGH *v.* CHUNDER COOMAR ROY
[W. R., 1864, 76

7. ——— *Delay in bringing the suit—Specific Relief Act, s. 22—Joinder of a person not a party to the contract of which specific performance is sought.*—A plaintiff sued on the 28th February 1881 for specific performance of a contract entered into on the 1st March 1878 by defendant No. 1, and joined in that suit as a defendant a third person, who alleged that he was the owner of the property, the subject of the contract, seeking to obtain possession and other relief as against such third

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be considered by the Courts in the ... judicial discretion under s 22 of the Specific Relief Act yet the point not having been taken in the Courts below and there being nothing on the record to lead the Court to presume that the ordinary rule applicable to suits of this nature had been d s regarded in the Courts below, the objection ought not under the circumstances to be allowed to prevail in second appeal MOKUND LALL *v* CHOTAY LALL

[I L. R., 10 Calc, 1081

8 ———————— *Performance of portion of agreement —Per* PONTIFEX *J* —It is of the essence of specific performance that part only of an agreement should not be performed CUTTS *v* BROWN

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[5 C L R, 487

and on appeal CUTTS *v* BROWN

[7 C L R., 171

9 ———————— *Specific performance*

...

LOCHUN AITCH

14 W R, O C, 15

10 ———————— *Ascertainment of damages—Civil Procedure Code 1859 s 192—Specific performance as applied to partnerships* —The ascertainment of the amount of damages was a necessary preliminary to a decree under Act VIII of 1859 s 192 for specific performance of a contract and pay

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are only two classes of cases in which specific performance of an agreement to enter into a partnership has been decreed first where the parties have agreed to execute some formal instrument which would confer rights that would not exist unless it was executed secondly where there has been an agreement which has come to an end to carry on a joint adventure and the decree that the agreement is valid prefaced by the declaration that the contract ought to be specifically performed is made merely as the foundation of a decree for an account VIRDACHALA NATTAN *v* RAMASAVAMI NAYAKAN

[1 Mad, 341

11 ———————— *Joint contractees ... to specific performance* ...

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12 ———————— *Discretion of Court to give relief—Vendor selling land to third parties in breach of his contract* —The fact that, subsequently to, and in breach of, his contract to sell, the vendor has sold the same land to third parties having notice of the contract and that if relief is refused to the plaintiff, the land may remain in possession of such third parties, does not affect the question as to the propriety of the exercise by the Court of its discretionary power to enforce the contract. GURUSAMI *v* GANAPATHIA

I. L. R., 5 Mad., 337

13 ———————— *Practice—Liberty to apply —Relief after judgment — Damages — Review—Alternative relief*—On the 27th April 1886 a plaintiff brought a suit praying for specific performance of a contract or in the alternative for damages and on the 24th November 1886 obtained therein a decree for specific performance with the usual liberty to apply On the 6th December 1886 the ... dan ... the ... Co ... of ... in ... for damages, when assessed, might be entered up *Held* that he was entitled to ask for such relief. HARISUNDARI DASSEE *v* HARI CHARAN MOZUMDAR CHOWDHRY

I. L. R., 15 Calc., 211

2 SPECIAL CASES

14 ———— **Agreement to purchase and payment of part of purchase money**—*Right of* ... and ... cert ... performance on paying down the rest of the said money SHIB KISHEN DOSS *v* ABDOOL SOBHAN CHOWDHRY

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But *see* RAMTONOO SURMAH SIRCAR *v* GOUR CHUNDER SURMAH SIRCAR

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15 ———— **Contract in respect of adjustment subsequent to decree**—*Act XXIII of 1861, s 11* —A suit lay for specific performance of a contract in respect of an adjustment subsequent to and for property beyond the decree notwithstanding s. 11 of Act XXIII of 1861 which applied only to subject matters relating to the decree. RAM LOCHUN BUBRA *v* MADHUB CHUNDER BUBRA

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SPECIFIC PERFORMANCE—*continued.*

See PARTIES—PARTIES TO SUITS—SPECIFIC PERFORMANCE.
[I. L. R., 18 Mad., 415
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2 C. W. N., 42
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SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*continued.*

person, stating that he was a benamidar of defendant No 1. On second appeal such third person contended that the discretion given to the Court under s 22

Act, yet the point not having been taken in the Courts below, and there being nothing on the record to lead the Court to presume that the ordinary rule applicable to suits of this nature had been disregarded in the Courts below, the objection ought not under the circumstances to be allowed to prevail in second appeal MOKUND LALL v CHOTAY LALL [I L. R., 10 Calc, 1061

8 ——— *Performance of portion of agreement—Per* PONTIFEX, *J.*—It is of the essence of specific performance that part only of an agreement should not be performed CUTTS v BROWN . . . I. L R., 6 Calc., 328

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LOCHUN AITCH . . . 14 W. R, O. C., 15

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SPECIFIC PERFORMANCE—*continued.*

1. GENERAL CASES—*concluded.*

11 ——— *Joint contractees*

performances. SAFIUR RAHMAN v MAHARAMUNNESSA BIBI I. L. R, 24 Calc., 832

12 ——— *Discretion of Court*

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13. ——— *Practice—Liberty to apply — Relief after judgment — Damages — Review—Alternative relief.*—On the 27th April 1886, a plaintiff brought a suit praying for specific performance of a contract, or in the alternative for
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2. SPECIAL CASES

14. ——— **Agreement to purchase and payment of part of purchase money**—*Right of purchaser.*—When there is an agreement to sell and a part of the consideration-money has been received, the stipulating purchaser is entitled to specific performance on paying down the rest of the said money. SHIB KISHEN DOSS v. ABDOOL SOBHAN CHOWDHRY . . . 3 W. R., 103

But *see* RAMTONOO SURMAH SIRCAR v. GOUR CHUNDER SURMAH SIRCAR . . 3 W. R., 64

15. ——— **Contract in respect of adjustment subsequent to decree**—*Act XXIII of 1861, s 11.*—A suit lay for specific performance of a contract in respect of an adjustment subsequent to, and for property beyond, the decree, notwithstanding s. 11 of Act XXIII of 1861, *which applied only* to subject-matters relating to the decree RAM LOCHUN BUBRA v MADHUB CHUNDER BUBRA [3 W. R., 118

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

16. ——— Re-sale on purchase-money being unpaid—*Delay in payment where no time is fixed.*—When the purchaser of an estate paid earnest-money, and no time was fixed for the payment of the balance, and the vendor re-sold the property within a week,—*Held* that the vendor was bound to have waited a reasonable period; that the second purchaser took nothing; and that the first purchaser was entitled to a decree for specific performance. MUTHUR ALI *v.* SHEO SAHOY SINGH [W. R., 1864, 281

17. ——— Agreement to exchange land—*Remedy of seller on refusal to give land.*—Where a piece of land was sold in consideration of receiving in exchange another piece of land which was not given,—*Held* that the seller's remedy, having regard to the terms of the contract made, was not by a suit to get back the land sold, but by a suit for damages for breach of contract, or by a suit for the specific performance of the contract or so much of it as was left unperformed. NASIR ALI *v.* GOVERNMENT [3 Agra, 394

18. ——— Contract for lands for which others were to be exchanged—*Suit for damages.*—Where plaintiff had contracted with defendant to purchase from him a share of certain landed estates, excluding from the contract certain land in those estates situated within a defined boundary, defendant binding himself to make over to plaintiff other lands in exchange,—*Held* that, if defendant failed to make over the lands last mentioned, plaintiff might sue him for specific performance or for damages, but could not sue for the excepted lands. KISHOREE DEBIA *v.* JUGUNNATH ACHARJEE [9 W. R., 269

19. ——— Refusal to act wholly on deed of partition—*Suit for rights as they existed before deed.*—Where a partition deed has been made and partly acted upon, and nothing is asserted against it in the way of undue influence,—*Held* that the proper course for the plaintiff was to sue to enforce performance, and not for her rights as they may have existed previously. BHOWANEE KOONWER *v.* THAKOOR DASS [2 Agra, 277

20. ——— Agreement to re-unite after partition—*Absence of money consideration.*—Certain pattidars applied for a butwara under the provisions of Regulation XIX of 1814. At the time of the butwara, it was stipulated between the pattidars of 6 and 7 annas shares that, in the event of a particular village falling by division wholly to either of them, they would re-unite and hold the 13 annas share joint as before. One party having resiled from this agreement, it was held that the other party was entitled to sue for specific performance, and such a suit would lie only in the Civil Court. *Held* that the absence of mention of any money consideration in the agreement was no bar to its being enforced, as the parties thereto had waived all objection on the score of the particular village named, or any other, falling wholly or in part to their respective shares. NUKCHAD SINGH *v.* HUNOOMAN DUTT SINGH [10 W. R., 69

21. ——— Contract for appointment of arbitrators under Land Acquisition Act.—In the matter of land acquisition proceedings under Act VI of 1857 a notice was, on the 28th of November, served upon the defendants, signed by the Collector, stating that he had appointed an arbitrator on behalf of Government, and requiring the defendants to appoint a second arbitrator to determine the amount of compensation for the land (describing it) required by the B., B., and C. I. Railway Comdany. The defendants' secretary wrote in reply that the defendants had appointed an arbitrator on their behalf to determine the amount of compensation for their land required for the B., B., and C. I. Railway Company. *Semble*—That a contract was entered into by the last-mentioned notice and letter of reply to it, of which specific performance could be enforced. KHARSHEDJI NASARVANJI CAMA *v.* SECRETARY OF STATE FOR INDIA . . 5 Bom., O. C., 97

22. ——— Agreement for renewal of lease—*Agreement by husband alone—Non-concurrence of mortgagee.*—Immoveable property situate in the Island of Bombay was conveyed in 1859 to *N* and his wife (Parsis), their heirs, executors, administrators, and assignees, and was subsequently mortgaged by *N* and his wife, but the mortgagee did not enter into possession. In 1861 *N* alone entered into an agreement with the plaintiff to give them a lease of that property for five years, the plaintiffs being willing to accept that lease with such title as *N* could confer. *Held* that, notwithstanding the non-concurrence of the mortgagee and of *N*'s wife, *N* must specifically perform his contract. The non-concurrence of the mortgagee could not prevent the right of the plaintiff to specific performance by *N* of the agreement, because *N* should either himself redeem the mortgage or permit the plaintiff to do so. NAOROJI BERAMJI *v.* ROGERS . 4 Bom., O. C., 1

23. ——— Contract requiring registration—*Failure to register—Unregistered document.*—The plaintiff contracted with the defendant for the purchase of a piece of land, and paid him part of the purchase-money, it being agreed that the balance should be paid after registration of the bill of sale. The defendant kept the document with him, but failed to get it registered. In a suit by the plaintiff to enforce specific performance,—*Held* the suit would lie. TRIPURA SUNDARI *v.* RASIK CHANDRA KANUNGUI [6 B. L. R., Ap., 134: 15 W. R., 189

See RAHMATULLA *v.* SARIUTULLA KAGCHI [1 B. L. R., F. B., 58: 10 W. R., F. B., 51

TULSI SAHU *v.* MAHADEO DAS [2 B. L. R., A. C., 105: 10 W. R., 483

FATI CHAND SAHU *v.* LILAMBER SINGH DAS [9 B. L. R., 433: 14 Moore's I. A., 129 16 W. R., P. C., 26

PRABHURAM HAZRAH *v.* ROBINSON [3 B. L. R., Ap., 49: 11 W. R., 398

SPECIFIC PERFORMANCE—*continued*

2 SPECIAL CASES—*continued.*

24 ——— **Unregistered contract—** *Agreement*—The plaintiff lent defendant R20,000, and received a document in the following terms

interest at R1 10 per cent per mensem" In a suit to compel specific peformance and for damages for breach of the agreement contained in the above memo,—*Held* that the memo contained an agreement of which a Court of equity would grant specific performance, had not defendant rendered specific performance impossible CURRIE v MUTU RAMEN CHETTY **3 B. L R., A. C, 126: 11 W. R., 520**

25. ——— *Registration Act (III of 1877), ss 48, 49, and 50—Oral agreement, Evidence of—Effect of oral agreement as against subsequent registered conveyance*—*A*, by an oral agreement, agreed to grant two mokurari leases of certain properties upon certain terms to *B*, and thereupon executed two mokurari leases in favour of *B* which

a declaration that the leases to *C* and *D* were void as against him NEMAI CHARAN DHABAL v KOKIL BAG **I. L. R, 6 Calc, 534, 7 C L R, 487**

stituted jointly by *A* and *B* and payments to be made by *B*, for the recovery of certain property claimed by *A* against *C*, *A* would make over the but *A*, hout the *C*, and did not she could not sue to eject *A* *Semble*—*B*'s proper remedy was a suit for specific performance or for damages for breach of the contract, to support which it would have been necessary to allege performance of her part of the contract, or at least readiness and willingness to perform, but prevention by *A* BHOBO SOONDREE DASSEAH v. ISSUR CHUNDER DUTT **[11 B L. R., P. C, 36 18 W. R, 140**

27 ——— **Agreement for mutual refusals before giving up dwelling house—** *Condition precedent — Limitation Act, 1877, art 113*—Two brothers, *V* and *R*, in 1861 agreed together that part of their house should be divided

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

and part enjoyed in common Each brother was to

wished to purchase *V* called upon *R* in 1877 either to pay R418 or give up the house *Held* that this was an agreement enforceable by law, that until demand no cause of action arose, and limitation only began to run from the demand, that specific performance should be granted in the alternative. *Venkappa Chetti v Akku, 7 Mad, 219,* distinguished. VIRASAMI MUDALI v RAMASAMI MUDALI **I. L. R., 3 Mad, 87**

28 ——— **Contract for sale of land by Receiver**—*Misdescription — Purchaser having personal knowledge—Title to land between high and low water mark*—The defendant, who for twelve years had occupied land as tenant, purchased the land at a sale by the Receiver, but refused to complete the purchase on the ground of material misdescription in the advertisement of sale, in that a road and ghât, comprised within the boundaries mentioned in the advertisement, were not the pro-

of the property sold having brought a suit against the defendant for specific performance, the defendant contended that the Receiver was a necessary party to the suit, and that the sale had been rescinded by a statement of the Receiver that he would forfeit the

9 bighas 8 cottahs 10¾ chittaks, the same chitta, however, in giving the eastern boundary of the property, described it as lying "on the west of the low water of the Ganga" *Held* that there had been no rescission of the contract, that the plaintiffs, being owners of the land down to low water mark, were entitled to all subsequent accretions, and were therefore entitled to include in their measurement all land down to low water mark, and having regard to the fact that the defendant was personally acquainted

v KASINATH BISWAS **9 B L. R, 128**

29 ——— **Agreement to sell land at a valuation**—*Land of peculiar character—Construction of agreement in a pottah—Assignment of pottah—Rights of assignees against original lessors*—The owners of ancestral village lands gave a mokurari pottah of land in a mouzah to the proprietor of a neighbouring colliery "for quarrying coal,

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

for building stores, for garden, for orchard, for road-making, and for other uses." The pottah, besides the above, contained the following, as translated: "You will build a factory according to any plan you choose, and possess the same. Within that aforesaid mouzah we will not give settlement to anybody. If you take possession, according to your requirements, of extra land over and above this pottah, we shall settle such land with you at a proper rate. Thereat we shall make no objection." The lessee, after being in possession for some years under the pottah, assigned it to the plaintiffs, who afterwards took possession of the whole of the extra land, and demanded a pottah therefor from the defendants, and made a contract advantageous to themselves to sell it to third persons. The defendants refused to grant them a pottah. In a suit for specific performance,—*Held* in the High Court that where a contract is made to sell land at a fair valuation, and there is no difficulty in ascertaining what a fair valuation would be, the Court will take the usual means of ascertaining it, and decree performance of the contract accordingly. But when, having regard to the peculiar character of the property, as in the case of land supposed to contain coal, or valuable minerals, the value of the land must be to a great extent a matter of guess and speculation, the Court will not decree specific performance, as it has no means of ascertaining by the ordinary methods what price the plaintiff should pay. *Held* by the Privy Council, on the construction of the pottah, that if the lessee, or his assigns, had required additional land for the purpose of carrying out the objects for which the pottah was granted, then the lessors would have been bound to settle so much of the adjoining land with them as might have been necessary for such requirements. *Held* also that the plaintiffs, the assignees, were not entitled to compel the defendants to grant them a pottah of the extra land, even at a reasonable rate, merely for the purpose of selling it. *Semble*—In a suit for specific performance of an agreement to sell land, the fact that on account of the extraordinary character of the property, as its containing coal or other valuable minerals, there is considerable difficulty in fixing a reasonable rate for it, is not a sufficient reason for refusing a decree. NEW BEERBHOOM COAL COMPANY *v.* BULARAM MAHATA

[I. L. R., 5 Calc., 175, 932
L. R., 7 I. A., 107

30. ———— **Lease savouring of champerty**—*Loan of money to carry on litigation.*—Specific performance decreed of a lease, though the lease formed part of an arrangement whereby, as a consideration for the lease, the plaintiff was to lend the defendant money to enable him (*inter alia*) to commence legal proceedings against the then tenant of the subject-matter of the intended lease. PITCHAKUTTI CHETTI *v.* KAMALLA NAYAKKAN

[I Mad., 153

31. ———— **Compromise made under alleged concealment of fact**—*Husband and wife—Armenian Christians.*—Specific performance decreed of an agreement in the English form made between husband and wife (Armenian Christians) in the nature of a family compromise respecting the wife's separate property. In the answer of the wife it was alleged that property purchased by the husband had been concealed by him from her when she executed the agreement. *Held*, under the circumstances, that that fact, even if proved, was not sufficient to entitle the wife to treat the agreement as a nullity. *Held* also that, if the property said to have been concealed by the husband had been purchased by him out of moneys belonging to the wife's separate estate which was clothed with a trust for the children of the marriage, the wife's remedy was to enforce her own and childern's rights by bill to compel a settlement of any property improperly withheld by the husband at the date of the execution of the agreement. GREGORY *v.* COCHRANE

[8 Moore's I. A., 275

ARRATHOON *v.* COCHRANE 4 W. R., P. C., 66

32. ———— **Contract**—*Disability to contract—Temporary disability of zamindar to contract, his estate being subject to the provisions of Act VI of 1876 (Chutia Nagpore Encumbered Estates Act), amended by Act V of 1884—Effect of continuance of transactions after the release of his estate from management under that Act.*—It is competent to a person, who has been, but is no longer, in a state of disability, to take up and carry on transactions commenced while he was under disability in such a way as to bind himself as to the whole. He may be bound by a contract, of which the terms are to be ascertained by what passed whilst he was disabled from contracting. The defendant's ancestral zamindari was placed under management by an order made under s. 2 of Act VI of 1876, and he became incapable of contracting in reference to it. He, however, agreed with the plaintiff that the latter should advance money on mortgage, and take a lease of part of the estate. Afterwards by an order, whether well founded or not, at all events effectively made, under s. 12 as amended by Act V of 1884, he was restored to the possession of his estate, again acquiring the right to contract about it. He carried on the transaction with the plaintiff, retaining the benefit of money paid by him, but in the end not completing. *Held* that he was bound by the contract, though its terms were to be ascertained by what had passed while he was disabled from contracting, and that specific performance could be decreed against him. Whether his entering into the contract was against the policy of the Act, and whether the order under s. 12 had, or had not, been made on good grounds, did not affect the question. GREGSON *v.* UDOY ADITYA DEB I. L. R., 17 Calc., 223

[L. R., 16 I. A., 221

33. ———— **Transfer of Property Act, 1882, s. 83**—*Civil Procedure Code, s. 375.*—A sum of money having been deposited in Court under the Transfer of Property Act, s. 83, by a vendee of the mortgagor, the mortgagee refused to accept it in discharge of his mortgage except on the terms that the depositor should convey to him part of the

he mortgagee was entitled to a decree for specific performance of the agreement to convey TAYYA v PICHAYYA I L R, 13 Mad., 316

34. ———— Reversionary interest, Sale of—*Purchase money less than market value of reversion—Stat 31 Vict, c 4—Inadequate consideration*—The rule observed in England until the passing of Stat 31 Vict c 4 that specific performance of an agreement to sell a reversionary interest should not be decreed where the purchase money was less than the market value of the reversion,—*Held* not to be the rule in India GITABAI v BALAJI KESHAV SHASTRI NAGARKAR [I. L R., 17 Bom, 232

Relief
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means of
knowledge, though their relative legal positions were subsequently discovered to be different from what they had supposed at the time —*N*, a large landed proprietor, died without issue in 1867 His widow *G* held possession of the estates down to her death in 1878
sion, one *N K*,
son of *N*, was
authorities
the property left by *N*
in April 1879 by one *C*, claiming as a sister's son of *N* *C*, being a pauper, sold a portion of the property in suit to one *M* for R20 000 and made *M* a co-plaintiff in the suit The second suit against *N K* was instituted in May 1879 by *S* and others the defendants, appellants in this present suit, who claimed title as the nearest sapindas of the deceased *N* In each of these two suits the plaintiff or plaintiffs were successful In each the defendant appealed
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against *C* and *M* asking for a declaration that they were entitled to succeed to the property of the

the 6th of January 1888 the Collector of Bareilly instituted a suit for specific performance of the

TOR OF BAREILLY I L R, 16 All, 423

fresh document CHINNA KRISHNA REDDI v DORASAMI REDDI . I L R, 20 Mad., 19

entitled to specific performance or to an injunction against the further breach of the agreement ASHRUFOONISSA BEGUM v. STEWART 7 W. R., 303

his daughter with a person to whom the daughter has been betrothed It will, however, award damages *against the father for breach by him of the contract of betrothal* UMED KIKA v NAGINDAS NAROTAMDAS 7 Bom, O. C, 122

39 ———— *Hindu law*—*Ceremonies of betrothal*—Per GLOVER, J—A suit for specific performance of a contract to give in marriage will not lie the remedy is an action for damages for breach of the contract The *ceremony* of betrothal does not, by Hindu law, amount to a binding irrevocable contract of which the Court would give specific performance IN THE MATTER OF GUNPUT NARAIN SINGH . I. L. R., 1 Calc, 74

S C GUNPUT NARAIN SINGH v RAJUN KOER [24 W. R., 207

40 ———— *Suit to enforce betrothal of marriage—Suit for damages*—The plaintiff, on behalf of her infant son, sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that, under the Hindu law, betrothal was the same as marriage, and could not be repudiated, and that the defendant had on demand refused to give up

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

M B. The defendant pleaded, *inter alia*, that the betrothal had been repudiated, as the family to which the plaintiff belonged had been guilty of female infanticide, and that it would be illegal, according to Hindu law, to enter into relationship with it. The ceremonies necessary to effect a betrothal had not been performed, though some ceremonies had been gone through. *Held* that, assuming the ceremonies, which are said to have taken place, to have constituted a contract to marry, and taking into consideration the particular cause assigned for the breach, the relief, if the plaintiff were entitled to any, should be in the shape of damages, and not by the specific performance of the alleged contract. NOWBUT SINGH *v.* LAD KOOER . . . . 5 N. W., 102

41. ——— Agreement by partners in absence of representative of a deceased partner—*Person in position of trustee.*—Surviving partners are treated as trustees of the partnership property for the benefit of the representative of a deceased partner; and an agreement entered into by such surviving partners, in the absence of the representative of a deceased partner, which agreement is inconsistent with the nature of such trust—to deal with the partnership assets only by way of sale—will not be specifically enforced. RAMLAL THAKURSIDAS *v.* LAKMICHAND MUNIRAM

[1 Bom., Ap., 51

42. ——— Stipulation in kabuliat—*Zamindar—Government, Liability of.*—One of the terms of a kabuliat, equally binding on the Government and a zamindar, the parties concerned, was as follows: "The construction of bheries (small embankments), the excavation of the silt of khals, the closing (the mouths) of the khals, the construction of gungura (large embankments), etc., in connection with the salt and sweet (*i.e.*, not saline) lands of the said pergunnah, shall be made by the Government of the Honourable Company." In a suit brought by the zamindar to obtain an order upon the Government to re-excavate and clear the water-passage of a particular khal situate within the pergunnah, the subject of the kabuliat,—*Held* that the case was not one in which the Court would decree specific performance. CHUNDER SEKHUR MOOKERJEE *v.* COLLECTOR OF MIDNAPORE

[I. L. R., 3 Calc., 464: 1 C. L. R., 384

43. ——— Agreement to advance money on mortgage.—In a suit to compel the defendant to advance R1,800 or thereabouts to the plaintiffs, the unpaid balance of a sum of R3,000 which defendant agreed to advance on mortgage, and for which a mortgage was executed and delivered to the defendant,—*Held* that the Court ought not to make a decree for specific performance of such agreement. ANAKARAN KASMI *v.* SAIDAMADATH AYULLA

[I. L. R., 2 Mad., 79

44. ——— Suit for execution of fresh instrument on retention of first one by defendant—*Specific Relief Act (I of 1877), ss 12, 21, 22—Suit to restore terms of lost instrument.*—The plaintiffs, alleging that the defendants, having executed in their favour and delivered to them a bond the consideration for which was money due to them for rent of land and on a former bond, had received it back for registration, and, refusing to register it, had retained it, sued the defendants to have a similar bond executed and registered. *Per* MAHMOOD, *J.*—That it was doubtful whether the suit could be regarded as a suit for specific performance of a contract, and whether the only remedy open to the plaintiffs was not a suit for the money. It was only on the hypothesis that the mere writing of the original bond, in the absence of registration and final delivery, did not amount to a performance of the contract, that the suit was entertainable at all. That, assuming the suit to be one for specific performance of a contract, the plaintiffs were not entitled to the specific relief which they sought, since they could obtain their full remedy by suing for the money in respect of which the fresh bond was sought to be executed; and they had failed to prove the exact terms of the original bond. Observations on the nature of the evidence required to prove a contract of which specific performance is sought. *Per* STUART, *C.J.*—That the suit was bad in form and substance, and there was no ground for the remedy by specific performance of a contract. If the alleged bond were in existence, a suit simply and directly for the recovery of the money claimed by the plaintiffs would have sufficed, for in such a suit facts relating to the loss or concealment of the bond might have been proved, and under the circumstances secondary evidence at least of the terms of the bond might have been admissible, or the plaintiffs might have found themselves in a position to make out their claim by other evidence; but if the plaintiffs considered it material to their case to have their claim on the bond, the loss or destruction of which could not be doubted, their proper course of proceeding was by a suit to restore the terms of the lost bond, or, as it was said in Courts of equity in England, by suit to obtain the benefit of the lost deed or instrument; and that, if the suit could be taken to be one affording such a remedy, it contained no sufficient materials to warrant it being held that the bond was of the tenor and in the terms alleged by the plaintiffs. MAYA RAM *v.* PRAG DAT . . I. L. R., 5 All., 44

45. ——— Contract for sale and purchase—*Proposal made in letters—Earnest-money.*—The defendant in the name of his wife wrote to the plaintiffs a letter the material portions of which was as follows: "The value of your house, No. 10, Rutton Mistry's Lane, has been fixed through the broker at R13,125; agreeing to that value I write this letter. Please come over to the house of my attorney between 3 and 4 this day with the title-deeds of the house, and receive the earnest. There shall be no doing otherwise." The plaintiffs through their manager wrote in answer to the defendant's wife: "You having agreed to purchase our house for R13,125 have sent a letter through the broker, and were agreeable to it, and we will be present between 3 and 4 this day at your attorney's and receive the earnest." The plaintiffs and defendants

SPECIFIC PERFORMANCE—*continued*

2 SPECIAL CASES—*continued*

met at the attorney's office in the absence of the attorney, and no inspection of title deeds or payment of the earnest money therefore took place *Held*, in a suit for specific performance of the above contract, that the first letter contained no absolute proposal or undertaking to purchase, but merely fixed the price *to be given* for the house, leaving the inspection of

ascertained. KOYLASH CHUNDER DOSS v TARINY CHURN SINGHEE I. L R, 10 Calc, 588

46 ———— *Agreement to sell land by guardian of minor contingent upon the permission of the Court—Specific Relief Act (I of 1877), s 26*—A certificated guardian of certain minors entered into the agreement with the plaintiff to sell certain land belonging to them for a fixed price contingent upon the leave of the Court which was necessary, being obtained to the transaction, and a portion of the purchase money was paid by the plaintiff. The Court sanctioned the sale, but at a higher price than that agreed on between the

that the contract was not one which could be specifically enforced and that s 26 of the Specific Relief Act did not apply The contract as it stood was never a complete contract at any time, as it was contingent upon the permission of the Court, and the permission of the Court did not extend to the whole contract as agreed upon between the parties NARAIN PATTRO v AUKHOY NARAIN MANNA

[I L R, 12 Calc, 152

47 ———— Suit for specific performance of a contract against a minor—*Contract entered into by a guardian with the sanction of the Court—Act XL of 1858, s 18—Guardians and Wards Act (VIII of 1890), s 31*—In a suit to enforce specific performance of a contract against a minor entered into by a guardian appointed under Act XL of 1858 with the sanction of the Court, it was not shown that the contract was for the benefit of the minor *Held* that a decree for specific performance of a contract should not be made against the defendant while an infant *Flight v Holland*, 4 *Russ* 298, and *Sikher Chand v Dulputty Singh I L R, 5 Calc 363* referred to *Held* also that, although the jurisdiction to decree specific performance is discretionary it must be judicially exercised and no Court would, even if it could, make a decree for the specific performance of a contract, unless the contract was shown to be for the infant's benefit. JUGUL KISHORI CHOWDHURANI v ANUNDA LAL CHOWDHURI I. L. R, 22 Calc, 545

48 ———— *Contract Act (IX of 1872) s 11—Specific Relief Act (I of 1877), s 28—Hindu law—Guardian*—The mother and guardian of a Hindu minor entered into a contract for the sale of his land The vendee sued the minor by his mother and guardian *ad litem* for specific performance of the contract and for possession It was found that the contract was binding on the minor *Held* that the suit was maintainable *Fatima Bibi v Debnauth Shah, I L R 20 Calc, 508*, dissented from KRISHNASAMI v SUNDARAPPAYYAR I. L. R., 18 Mad, 415

49. ———— Contract relating to property of minor—*Decree for specific performance*—A decree for specific performance can be given against a minor when the Court finds that it is for the benefit of the minor that the contract should be performed *Krishnasami v Sundarappayyar, I L R, 18 Mad, 415*, approved *Fatima Bibi v Debnath Shah, I L R, 20 Calc, 509*, dissented from KHAIRUNNESSA BIBI v LOKE NATH LAL

[I L R., 27 Calc, 276

50. ———— Contract as to obtaining share of patni lease—*Partial performance*—In a suit against *K*, *H*, and *G* (a minor) to recover possession of an 8 anna share of a patni talukh, and to have a conveyance executed in plaintiff's favour on the allegation that one of the defendants, *K*, had agreed that the patni should be bid for at the sale advertised by the zamindar and if purchased should be taken in the name of *K* who should convey half to the plaintiff the cause of action was stated to be that defendants had fraudulently got a patni lease executed in their names and had taken possession, and refused to make over the stipulated share or take the balance of the consideration money The defendant *K*'s substantial plea was that the mehal had been sold in one lot along with others, and taken by the head member of the family without knowledge of the agreement, and that plaintiff had himself through an agent competed for the patni at the sale consequently that the event contemplated had not happened, and that plaintiff had himself avoided the agreement *H* pleaded that he was not privy to the agreement, and the minor that he was not bound The lower Appellate Court found that both parties had abandoned and avoided the agreement *Held* that, even if the agreement were binding on *K*, the Court could not compel a partial performance, which was all that could take place, for as plaintiff claimed

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24 W R., 434

51. ———— Giving lease with possession to another than plaintiff—*Suit for possession where remedy is suit for damages*—*D*, after having given a kutkina pottah of a certain village to *M*, granted another kutkina pottah of the same land to *L*, who obtained possession under his pottah *M*

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

then sued *D* and *R* for ejectment and to recover possession. *Held* that *M's* remedy lay in an action for damages, and that he could not claim specific performance unless *R* raised no objection to giving up possession. BUJRUNGEE DUTT PATTUCK *v.* MOORAD ALI . . . . . . 22 W. R., 7

52. ——— Conveyance to other parties after previous conveyance to one unregistered - *Remedy of prior vendee.*—Where the executants of a deed of conveyance (kobala) omit to have it registered, and the property is sold to a third party who takes it *bonâ fide* for valuable consideration, the party in whose favour the conveyance was executed should seek his remedy against the executants, not in a suit for specific performance, but in an action for damages. NUND KISHORE LALL *v.* MOHUN LALL . . . . . 22 W. R., 164

53. ——— Refusal of specific performance where suit for damages is proper remedy.—*Held*, under the circumstances of the case, that there was not such a contract on consideration received as to make this a case where a suit for specific performance rather than a suit for damages should be held to be the correct form of action. BAL GOBIND MUHTOON *v.* LUTAFUT HOSSEIN [7 W. R., 142

54. ——— Agreement extending lease on conditions—*Right to possession under former lease expired—Agreement extending lease on conditions—Right to compensation for being kept out of possession.*—The defendant's father was engaged in litigation for the purpose of obtaining possession of a zamindari under a lease for ten years, given by the zamindar, commencing in 1857. While the suit was pending, the defendant's father sold five-eighths of his interest under the lease to the plaintiff, and agreed to give plaintiff possession, in consideration of certain sums of money paid and certain liabilities undertaken by the plaintiff. The defendant's father obtained possession in 1865, but refused to put the plaintiff's agents in possession, on the ground that the plaintiff had not complied with the terms of the agreement. In giving a decree for the defendant's father against the lessor, the Privy Council reserved to the zamindar leave to institute a suit for redemption upon payment to the defendant of all sums advanced to him. In a suit instituted by the zamindar for redemption in 1866, a razinamah was signed by the plaintiff and defendant in the suit, by which the term of the original lease was extended to the year 1875 for the considerations therein contained. In 1867 the plaintiff brought a suit for possession, and claimed the benefit of the stipulations contained in the razinamah, or for damages. *Held* that the plaintiff was not entitled to possession, on the ground that defendant was not in possession under the old lease, inasmuch as the effect of the raznamah of 1866 was not to extend the former old lease, but plaintiff was entitled to recover damages for loss of profits during the defendant's father's possession under the old lease. FONDCLAIR *v.* VINAITHEETHAN CHETTY . 5 Mad., 251

55. ——— Vendor and purchaser—*Suit by purchaser against vendor for specific performance of contract of sale—Covenant by purchaser to build a temple—Specific Relief Act (I of 1877), s. 21.*—On the 16th November 1893 the first defendant agreed to sell a house to the plaintiff. The contract contained a covenant on the part of the plaintiff to build a temple and to secure an annuity to the vendor and his wife. On the 21st of the same month the first defendant sold and conveyed the same house to the second defendant and put him in possession. In a suit brought by plaintiff against defendants Nos. 1 and 2 for specific performance of the contract of the 16th November,—*Held* that specific performance could not be granted, the covenants contained in the agreement being such as the Court could not enforce. RAMCHANDRA GANESH PURANDHAREE *v.* RAMCHANDRA KONDAJI [I. L. R., 22 Bom., 46

56. ——— *Act I of 1877 (Specific Relief Act).*—Upon a contract for the sale of the proprietary right in lands the intending purchaser, insisting on a right to compel the vendor to give an absolute warranty of the title, withheld payment of the purchase money beyond the time fixed. He also sued for specific performance of the contract, requiring a guarantee from the vendor, until it appeared that the judgment of the Appellate Court was about to be given against him on the ground that he was not entitled to what he claimed. *Held* that certain reported cases where, apparently, the plaintiff had been willing to submit to have the agreement which was actually proved performed, were different from this; and that the decree dismissing the suit ought to stand. Here the plaintiff, insisting upon having that which he had no right to have, had delayed performing his part of the agreement on that account. BINDESHRI PRASAD *v.* JAIRAM GIR [I. L. R., 9 All., 705
L. R., 14 I. A., 173

57. ——— *Suit by vendee against vendor—Delay of vendee in completing—Rescission of contract by vendee—Time of the essence of the contract - Extension of the time stipulated for—Effect of such extension—Conditional waiver of performance within stipulated time—Notice to complete - Unreasonable notice.*—On the 26th February 1886 the defendant purchased a house from *C* for R4,500 and paid *C* a considerable portion of the purchase-money. Before the transaction was completed, and the conveyance executed, the defendant, on the 23rd June 1886, by an agreement in writing, of that date, agreed to sell the house to the plaintiff at an advanced price of R4,•00. The defendant was anxious that the sale should be completed in a short time, as the draft of the conveyance by *C* to himself had been prepared, though not finally approved, and the house was in bad repair and in a somewhat dangerous condition. He had applied to the Municipality for leave to repair the house, and the monsoon season had begun. Ultimately it was agreed between him and the plaintiff that the plaintiff should complete the purchase

SPECIFIC PERFORMANCE—*continued.*

2. SPECIAL CASES—*continued.*

within twelve days from the date of the agreement (22rd June 1886), and this was duly inserted in the agreement During the twelve days the plaintiff took no steps to have his conveyance prepared, but asked the defendant for a month's time to complete, saying that he had not the money with him. After some hesitation the defendant extended the time to the 10th August. On the 21st July [illegible] the drafts of the conveyance from *C* to the

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reminding him that the time to complete would expire on the 9th or 10th of August, and requesting him to be prepared then to complete the purchase; otherwise he would consider the agreement of the 23rd June to be null and void, and would himself begin to repair the house. The plaintiff sent no reply to this letter, but at an interview with the defendant told him that he was considering the matter. He, however, took no steps in the matter beyond getting a draft conveyance prepared. The deed of conveyance by *C* to the defendant was ready for execution on the 23rd August. Matters remained in this state until September On the 7th Se

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sending a reply [illegible] defendant considered his contract with the plaintiff to be at an end, and on the 13th September he completed his purchase from *C* without reference to the plaintiff. If the plaintiff had been ready to complete the purchase, the conveyance, to him by the

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dant began to repair the house When the repairs were almost complete, the plaintiff on the 5th October 1886, sent a notice to the defendant requiring him to specifically perform the agreement of the 23rd June 1886. The defendant refused, and the plaintiff filed this suit for specific performance *Held*, on the evidence, that the delay in completing the purchase was the delay of the plaintiff, and not of the defendant *Held* also that, having regard to the circumstances under which the contract with the plaintiff was made and to the nature of the property, the time stipulated for the completion of the purchase was of the essence of the contract, and that the extension of time granted at the plaintiff's request to the 10th August operated only as a waiver to the extent of substituting the extended time for the original time, and did not destroy the essentiality of the time. *Barclay v. Messenger, 43 L. J., Ch., 449.* The defendant's letter of the 23rd July was but a timely warning to the plaintiff that the contract would not be kept in suspense after the extended time had expired. The plaintiff, though thus warned, took no steps to complete, and was not therefore in a position to enforce performance from the defendant after the 10th August had gone by. It was contended for the plaintiff that the letter of the 7th September, written by the defendant's solicitors, treated the contract as then still subsisting and purported to put an end to it if not completed within four days, that the time so allowed was unreasonable, that the defendant, in fact, by that letter waived the plaintiff's previous default and gave the plaintiff a fresh starting point. *Held* that such was not the effect of the letter The letter was only a [illegible] and conditional waiver of

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stances of the case, and assuming time not to have been originally of the essence of the contract, the four days' time limited by that letter was unreasonable. FAKIR MAHOMED v. ABDULLA

[I. L. R., 12 Bom., 658

58.————Failure to give possession under agreement—*Suit for specific possession.*—A purchaser of property of which possession was contracted to be given, but which contract the vendor is unable to fulfil, is at liberty to rescind the contract and sue for repayment of the purchase-money, and is not obliged to sue for specific performance. MOHUN LAL v. BEHAREE LAL

[3 N. W., 336

59.————Agreement to pay money or in default to execute bond—*Suit to recover money.*—By an agreement it was contracted that the defendant should pay to the plaintiff R4,000 within six months, and that, in default of payment within such period, he should execute a bond to secure payment with interest within a further period of six months. The money not having been paid and no bond having been executed, more than twelve months after the date of agreement, the plaintiff sued to recover the amount due under the agreement with interest. *Held* that the suit was rightly brought, and that the plaintiff was not bound to have sued for specific performance of the agreement to execute a bond. ROHIMUNISSA BEGUM v. MOHAMED MIRZA . . . . 10 C. L. R., 103

60.————Agreement for assignment of rents—*Suit for consideration-money—Damages.*—The plaintiff having agreed to assign certain arrears of rent due to him to the defendant for a consideration, brought this suit in which he tendered the kobala of assignment and claimed the consideration-money with interest. *Held* that the plaintiff had misconceived the shape in which his suit was brought, and, as his claim was purely for money, he should have sued for damages for breach of contract, especially as it was found as a fact that the subject assigned was now worthless. *Held* also that as in a former suit brought by the present defendant for specific performance of the same contract the present plaintiff (as then defendant) had resisted successfully and without qualification, he could not now treat the

SPECIFIC PERFORMANCE—*concluded.*

2. SPECIAL CASES—*concluded.*

contract as subsisting. SHEO PERGAH ROY *v.* INJORE TEWAREE . . . 21 W. R., 433

61. ——— Agreement by Government to pay moneys in lieu of tora garas hak—*Jurisdiction of Civil Courts—Pensions Act, XXIII of 1871, s. 4.*—A suit against Government, upon an alleged agreement by Government to pay moneys from its treasury in lieu of tora garas haks, falls within the prohibition, in s. 4 of Act XXIII of 1871, to Civil Courts to entertain any suit relating to any grant of money made by the British Government, whatever may have been the consideration for such grant, and whatever may have been the nature of the payment, claim, or right for which such grant may have been substituted. Observations on the cessation of the collection of tora garas by Government. *Quære*—Whether Government bound itself to act perpetually as agent of the garasias in the collection of tora garas. *Quære*—Whether the Civil Courts would compel the specific performance of such an agreement. MAHARVAL MOHANSANGJI *v.* GOVERNMENT OF BOMBAY I. L. R., 4 Bom., 437

SPECIFIC RELIEF ACT (I OF 1877).

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE I. L. R., 4 Calc., 380

See INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS. [I. L. R., 21 All., 348

See PRESCRIPTION — EASEMENTS — LIGHT AND AIR . I. L. R., 18 Bom., 474

s. 9 (Act XIV of 1859, s. 15).

See APPEAL — ORDERS. [I. L. R., 22 Calc., 830

See COSTS — SPECIAL CASES — SUMMARY SUIT FOR POSSESSION . 15 W. R., 268

See PARTIES — PARTIES TO SUITS — PRINCIPAL AND AGENT. [I. L. R., 5 Bom., 208

See POSSESSION—NATURE OF POSSESSION. [I. L. R., 15 Bom., 238

See POSSESSION, ORDER OF CRIMINAL COURT AS TO—NATURE AND EFFECT OF DECISION . . . 20 W. R., 12

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS. [I. L, R., 6 Bom., 477

See CASES UNDER SPECIFIC PERFORMANCE.

See STATUTES, CONSTRUCTION OF. [I. L. R., 19 Calc., 544

See TITLE—EVIDENCE AND PROOF OF TITLE [5 C. L. R., 278

This section corresponds with s. 15 of the Limitation Act of 1859. The following are cases decided on that section :—

1. ——— *Criminal Procedure Code, 1861, ss. 318, 319—Dispossession.*—The object and effect of s. 15 of Act XIV of 1859 considered, and the bearing of ss. 318 and 319 of the Code of Criminal Procedure with regard to cases of dispossession and the jurisdiction of the Civil Courts illustrated. ENAETOOLLAH CHOWDHRY *v.* KISHUN SOONDUR SURMA . . . 8 W. R., 386

2. ——— *Object of section—Wrongful dispossession—Onus of proof.*—S. 15 did not affect the general law on the matters to which it related, but provided a special remedy for a particular kind of grievance, *e.g.*, to replace in possession a person who had been evicted by a wrongful act from landed property of which he had been in undisturbed possession, and to prevent a powerful person from thus shifting the evidence of proof from himself to another less able to support it. KALEE CHUNDER SEIN *v.* ADOO SHAIKH . . 9 W. R., 602

3. ——— *Possessory actions by persons wrongfully dispossessed—Civil Procedure Code, 1859, s. 230.*—S. 230 of the Civil Procedure Code of 1859, which related to possessory actions by persons wrongfully dispossessed in execution of decrees, did not apply to a case determined under s. 15 of Act XIV of 1859. GOBIND CHUNDER BAGDEE *v.* GOBIND GHOSE MUNDUL . . . 7 W. R., 171

4. ——— *Previous possession—Dispossession.*—Mere previous possession will not entitle a plaintiff to a decree for the recovery of possession except in a suit under s. 9 of the Specific Relief Act, 1877, which must be brought within six months from the date of dispossession. *Khajah Enaetollah Chowdhry* v. *Kishen Soondur Surma,* *8 W. R., 389 ; Ertaza Hossein* v. *Bany Mistry, I. L. R., 9 Calc., 130 ; Debi Churn Boido* v. *Issur Chunder Manjee, I. L. R., 9 Calc., 39 ; Kawa Manjee* v. *Khowaz Nussio, 5 C. L. R., 278 ; Wise* v. *Ameerunnissa Khatoon, L. R., 7 I. A., 73 ; Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar, I. L. R., 8 Bom., 371 ; Pemraj Bhavaniram* v. *Narayan Shivaram Khisti, I. L. R., 6 Bom., 215 ; Mohabeer Pershad* v. *Mohabeer Singh, I. L. R., 7 Calc., 591 : 9 C. L. R., 164,* referred to and explained. PURMESHUR CHOWDHRY *v.* BRIJOLALL CHOWDHRY . . I. L. R., 17 Calc., 256

SHAMA CHURN ROY *v.* ABDUL KABEER [3 C. W. N., 158

NISA CHAND GAILA *v.* KANCHARAM BAGANI [I. L. R., 26 Calc., 579 3 C. W. N., 568

5. ——— *Suit to enforce right of way.*—S. 15 of Act XIV of 1859 was not applicable to a suit to enforce a mere right of way. HARO DYAL BOSE *v.* KRISTO GOBIND SEIN 17 W. R., 70

6. ——— *Nature of possession necessary for suit—Possession as trespasser.—Semble.*—Mere possession as a trespasser was not sufficient to entitle a plaintiff to recover in a suit brought under s. 15 of Act XIV of 1859. There must be in the

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

plaintiff juridical as opposed to mere physical possession DADABHAI NARSIDA *v* SUB-COLLECTOR OF BROACH . . . . 7 Bom, A. C., 82

7 —————— *Warrant of execution*—

meaning of s. 15 JADUB CHUNDER CHECHKY *v.* HEERALOLL SAHA

[1 Ind. Jur, N. S, 21: Bourke, O C., 384

8 —— —— *Right of way—Immoveable property*—A right of way is not "immoveable property" within the meaning of s. 9 of the Specific Relief Act MANGALDAS *v.* JEWANRAM

[I L. R, 23 Bom., 673

9 —— —— *Tenants illegally ejected.*—A tenant in possession after expiry of his lease and if s. 15, , not SOFA

OLL KHAN *v* WOOPEAN KHAN . 9 W R, 123

10. —— —— *Time within which suit must be brought*—The suit must be brought within six months of the alleged ouster, otherwise anterior possession would be of no avail to the plaintiff AMEER BIBEE *v* TUKROONISSA BEGUM

[7 W. R., 332

Upheld on review in TUKROONISSA BEGUM *v* MOGUL JAN BIBEE . . 8 W. R., 370

AMEEROONISSA KHATOON *v* WISE

[24 W. R., 435

The plaintiff is entitled to recover notwithstanding any other title DOE D KULLAMMAL *v* KUPPU PILLAI . 1 Mad., 85

11. —— —— *Trial of question of dispossession*—Plaintiff having sued under s 15, Act XIV of 1859, for possession of a parcel of land of which he alleged himself to have been dispossessed by defendants building a hut upon it, the Court of

CHAND MAHATA *v* NAWAB NAZIM OF BENGAL

[11 W. R., 229

12. —————— *Right under decree for possession*—A party recovering possession of land in virtue of a decree under s 15, Act XIV of 1859, recovered the land with the crop growing upon it, and was fully entitled to cut the same SHIRAJDEE PRAMANICK *v* EMAM BUKSH BISWAS

[13 W R., 104

13 —————— *Suit to set aside award* award allegaendant before prove his case,

[17 W R., 161

14 —— —— *Suit to set aside award under section*—Although in a suit to set aside an award made under s 15, Act XIV of 1859, plaintiff had to establish his own title before the party in possession could be required to make good his case, a Judge should look into the summary case itself, and ascertain if there had been a proper inquiry and trial in that case SUBBO MOHUN ROY *v* SURUT CHUNDER ROY . 16 W. R., 34

from the defendant therein, mesne profits for the period of dispossession RADHA CHARAN GHATAK *v* ZAMIRUNISSA KHANUM

[2 B L R, A. C, 67 11 W. R, 83

Reversing S C ZUMURUDOONISSA *v* RADHA CHURN GHUTTUCK 9 W R., 590

See JIAULLAH SHEIKH *v* INU KHAN

[I L R, 23 Calc, 693

and cases there cited

16. —————— *Mortgagee in possession—Dispossession by mortgagor—Suit for possession—Fraud*—It is no answer to a suit for possession under s 9 of the Specific Relief Act, brought against a mortgagor by a mortgagee who has been forcibly dispossessed by the mortgagor, to allege that the mortgage and possession under it were obtained by the fraud of the mortgagee The mortgagor's proper remedy is by way of a suit to set aside the mortgage and recover possession SAYAJI BIN NIMBAJI *v* RAMJI BIN LANGAPA

[I L R, 5 Bom., 446

17 *Partial dispossession—Suit for possession*—A possessory suit lies under s. 9 of the Specific Relief Act, when plaintiff's possession has been partially, as well as when it has been wholly, disturbed SABAPATHI CHETTI *v.* SUBBAYA CHETTI I. L. R, 3 Mad, 250

18. —————— *Possessory suit—Constructive possession by receipt of rents*—The mere by tenants does the meaning of the object of that y for that class of cases where a person in physical possession of property is forcibly dispossessed from it against his will and consent IN THE MATTER OF THE PETITION OF TARINI MOHUN MOZUMDAR. TARINI MOHUN MOZUMDAR *v* GUNGA PROSAD CHUCKERBUTTY

[I. L. R., 14 Calc, 649

SPECIFIC RELIEF ACT (I OF 1877)
—continued.

19. ———————— *Immoveable property—Right of fishery—Possession—Dispossession.*—The plaintiffs were fishermen belonging to the village of N. They claimed in this suit for themselves and the other fishermen of their village the exclusive right of fishing in the Nag thani Creek between high and low-water marks, within certain limits set forth in the plaint, and under s. 9 of the Specific Relief Act (I of 1877) they sought to recover possession of that right from the defendants, who they alleged, had dispossessed them within six months before this suit was filed. The Subordinate Judge held that they had established their right, and made an order directing that possession should be restored to them. The defendant then applied to the High Court under its extraordinary jurisdiction, contending that the order made by the first Court was beyond its jurisdiction, the right of fishing not being immoveable property within the meaning of that section. *Held* that the first Court did not act without jurisdiction, the right claimed coming within the denomination of immoveable property. BHUNDAL PANDA v. PANDOL POS PATIL . . . I. L. R., 12 Bom., 221

20. ——— *Right of fishery—Suit for possession of right to fish in a khal.*—A suit for the possession of a right to fish in a khal, the soil of which belongs to another, does not come within the provisions of s. 9 of the Specific Relief Act, 1877. NARADAR PARUE v. KUBIR PARUE [I. L. R., 18 Calc., 80

21. ———————— *Immoveable property—Right of fishery—Possession, Suit for.*—*Held* by the Full Bench (PRINSEP and PIGOT, JJ., dissenting)—A suit for the possession of a right to fish in a khal, the soil of which does not belong to the plaintiff, does not come within the provisions of s. 9 of the Specific Relief Act. FADU JHALA v. GOUR MOHUN JHALA . . I. L. R., 19 Calc., 544

22. ———————— *Immoveable property—Right of ferry.* A right of ferry is immoveable property or an interest therein within the meaning of the Specific Relief Act, s. 9. KRISHNA v. AKILANDA . . . I. L. R., 13 Mad., 54

23. ———————— *Mamlatdars' Courts Act (Bom. Act III of 1876)—Suit by a trespasser to recover possession.*—A trespasser, who has been dispossessed, is not entitled to bring a suit under s. 9 of the Specific Relief Act (I of 1877) or under Bombay Act III of 1876 to recover possession. *Dadabhai Narsidas* v. *Sub-Collector of Broach, 7 Bom. H. C. Rep., A. C. J., 82; Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar, I. L. R., 8 Bom., 371;* and *Virjivandas Madhavdas* v. *Mahomed Alikhan Ibrahimkhan, I. L. R., 5 Bom., 208,* referred to. AMIRUDIN v. MAHAMAD JAMAL [I. L. R., 15 Bom., 685

24. ———————— *Possession, Suit for—Suit in ejectment on a possessory title*—*Per* EDGE, C.J., STRAIGHT and TYRRELL, JJ. (MAHMOOD, J., *dissentiente*).—S. 9 of the Specific Relief Act is intended to provide a special summary remedy for a person who, being, whatever his title, in possession of immoveable property, is ousted therefrom. That section does not debar a person who has been ousted by a trespasser from the possession of immoveable property to which he has merely a possessory title from bringing a suit in ejectment on his possessory title after the lapse of six months from the date of his dispossession. *Davison* v. *Gent, 26 L. J. Exch., 122; Asher* v. *Whitlock, L. R., 1 Q. B., 1; Wise* v. *Ameer-un-nissa Khatoon, L. R., 7 I. A., 73; Pemraj Bhabaniram* v. *Narayan Shivaram Khisti, I. L. R., 6 Bom., 215; Krishnarav Yashvant* v. *Vasudev Apaji Ghotikar, I. L. R., 8 Bom., 371;* and *Muhammad Yusuf* v. *Sukh Nath, Weekly Notes, All., 1887, p. 55,* referred to. *Per* MAHMOOD, J.—A person who is suing upon a merely possessory title to recover possession of immoveable property against a person who has ousted him must bring his suit, if at all, under s. 9 of Act I of 1877, and therefore within six months from the date of his dispossession. WALI AHMAD KHAN v. AJUDHIA KANDU [I. L. R., 13 All., 537

25. ———————— *Nature of possession giving right of suit—Juridical possession.*—Where the plaintiff alleged that he was in possession of a certain room as representing his father and uncle who were alive, but who were not parties to the suit, and that he had been dispossessed from such room within six months of the institution of the present suit,—*Held* that his possession, not being juridical possession, did not entitle him to maintain a suit under s. 9 of the Specific Relief Act. Permission to be allowed to amend the plaint by alleging that the possession of the plaintiff was exclusive possession on his own account was not allowed, such allegation being inconsistent with the case on which he came into Court. NRITTO LALL MITTER v. RAJENDRO NARAIN DEB [I. L. R., 22 Calc., 562

26. ———————— *Suit for possession by person evicted brought more than six months from date of dispossession against one having better title than himself.*—Certain land belonging to two brothers was mortgaged by one of them and leased to plaintiffs by the mortgagee. The heirs of the other brother, declining to accept the mortgage or the lease which had been granted under it as binding on them, evicted plaintiffs from the land. Plaintiffs now brought this suit against the defendants to recover the possession of which the defendants had deprived them by such eviction. The defendants' title was found to be good. *Held* that s. 9 of the Specific Relief Act was not applicable, and that plaintiffs could not succeed. *Per* SUBRAHMANIA AYYAR, J.—That it is an undoubted rule of law that a person who has been ousted by another who has no better right is, with reference to the person so ousting, entitled to recover by virtue of the possession he had held before the ouster, even though that possession was without any title. *Asher* v. *Whitlock, L. R., 1 Q. B., 1; Sundar* v. *Parbati, L. R., 16 I. A., 186: I. L. R., 12 All., 51; Ismail Ariff* v. *Mahomed Ghouse, L. R., 20 I. A., 99: I. L. R., 20 Calc., 834,* referred to. *Nisa Chand Gaita* v. *Kanchiram Bagani, I. L. R., 26 Calc., 579,* distinguished. Also that s. 9 of the

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

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and advantages apart from the true owners title
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KHEIL, *J.*—

The rule is that where plaintiff in possession without any title seeks to recover possession of which he has been forcibly deprived by a defendant having a good title, he can only do so under the provisions of s 9 of the Specific Relief Act, and not otherwise. Here the defendants held under a lease granted by a person who was found to have title, and a suit to recover possession would only lie under the provisions of s 9 of the Specific Relief Act, and this was clearly not such a suit MUSTAPHA SAHEB *v* SANTHA PILLAI

[I. L. R., 27 Calc, 179

27 ———— *Civil Procedure Code, 1877 s 103—Re-hearing—Review*—S 9 of the Specific Relief Act does not prohibit a re-hearing under s 103 of the Code of Civil Procedure A re-hearing differs widely from a review ANTHONY *v* DUPONT . I. L. R, 4 Mad, 217

28 ———— *Suit or possession of land by person wrongfully ejected—Joinder of other claims*—A Court should in all cases in which it applied give effect to the provisions of the first paragraph of s 9 of the Specific Relief Act, 1877, whether that section is expressly pleaded or not There is nothing to prevent a claim for damages and a claim for establishment of title being joined with a claim for the relief provided for by the above-mentioned section RAM HARAKH RAI *v* SHEO DIHAL JOTI . . . I. L. R, 15 All, 384

29. ———— *Decree for possession—Form of decree* Where a decree was passed under s 9 of the Specific Relief Act (I of 1877) giving the plaintiff possession, and also directed that the costs of removing huts and filling up excavations should be paid by the defendant under this decree,—*Held* that the latter portion of the decree was beyond the scope of a possessory decree under s 9 of the Specific Relief Act and must be set aside TILAK CHANDRA DAS *v* FATIK CHANDRA DAS

[I. L. R, 25 Calc, 803

———— s 18

See VENDOR AND PURCHASER—MISCELLANEOUS CASES 2 C L R, 382
[I. L R, 14 Mad, 459

———— s 19—*Suit for declaration under a mokurari pottah—Alternative relief—Civil Procedure Code (Act X of 1877), s 28*—A suit to have a mokurari pottah enforced as against one co-sharer granting it and other co-sharers who repudiate it, and in the alternative to have the salami paid for the mokurari pottah returned, is in substance a suit to enforce a contract to place the plaintiff in possession of the land under the pottah, and to declare his rights to it as against all the defendants, and under s 19 of the Specific Relief Act the plaintiff is entitled to ask for compensation as against the defendant granting the pottah Under s 28 of the Civil Procedure Code such an alternative claim may be allowed against one or more of the defendants RAJDHUR CHOWDHRY *v* KALIKRISTNA BHATTACHARJYA
[I L. R, 8 Calc, 963: 11 C. L. R., 330

———— ss 20, 21

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
[I. L. R, 14 Mad, 18

1 ———— s 21—*Agreement to refer to arbitrati*
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suit to recover damages for breach of the contract, the defendant pleaded that the dispute should have been referred
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provides that,
Procedure no
tration shall be specifically enforced, but if any person who has made such a contract and has refused to perform it sues in respect of any subject which he has contracted to refer the existence of such contract shall bar the suit" *Held* that, before that section could be relied upon, it must be shown that the plaintiff had refused to refer to arbitration, and that the filing of the plaint was not such a refusal KOOMUD CHUNDER DASS *v* CHUNDER KANT MOOKERJEE
[I. L. R., 5 Calc., 498: 5 C. L R., 264

2 ———— *Agreement to refer to arbitration—Award—Suit in respect of matter referred barred*—The parties to a suit applied for an adjournment of it on the ground that they had agreed to refer the matters in difference between them in such suit to arbitration The Court accordingly adjourned the suit, and the matters in difference therein were referred to arbitration by the parties, and an award was made thereon disallowing the plaintiff's claim *Held* that, under these circumstances the further hearing of such suit was barred. SALIG RAM *v* JHUNNA KUAR
[I. L R., 4 All., 548

3 ———— *Agreement to refer to arbitration—Refusal to refer—Suit in respect of matter agreed to be referred—Pleadings*—One of the parties to a contract to refer a controversy to arbitration brought a suit for part of the subject matter referred The defendants pleaded the bar of s 21 of the Specific Relief Act, but did not allege in their answer to the plaint that the plaintiff refused to perform his contract *Held* that the mere act of filing the suit on the part of the plaintiff was not tantamount to a refusal to perform his contract in the sense of s 21 of the Specific Relief Act The contract the existence of which would bar a suit under the circumstances contemplated by s 21 of the Specific Relief Act, must be an operative contract,

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

and not a contract broken up by the conduct of all the parties to it. TAHAL *v.* BISHESHAR [I. L. R., 8 All., 57

4. ———— *Contract to refer dispute to arbitration—Refusal to perform such contract—Right of suit.*—To bar a suit under s. 21 of the Specific Relief Act, a refusal to arbitrate must be before the action is brought. CRISP *v.* ADLARD [I. L. R., 23 Calc., 956

5. ———— *Agreement to refer to arbitration—Refusal to perform agreement.*—In a suit against a brother-in-law for maintenance the defendant alleged that, after the plaintiff had left his house, an agreement had been made between them to refer their dispute to arbitration, that the agreement of reference had been actually signed, but that, on the day fixed by the arbitrators for making their award, the plaintiff had given notice to them not to make an award, and accordingly they had not done so. The defendant contended that, by reason of this agreement, the plaintiff's suit was barred by s. 21 of the Specific Relief Act I of 1877. The alleged agreement to refer was in the following terms: "To *D M* and *D D.* We, the undersigned two persons, give in writing to you as follows: We used to reside and act in the house together in peace and harmony. Lately, a few days ago, in consequence of a disagreement amongst the women, *V* resided separately. Upon persuasion having been used towards her, *V* again resides in the house together with the rest: so now all are residing in the house in peace and harmony. If any occasion should arise, and if any disagreement should take place amongst the women, in order to find a remedy for that, we, the undersigned two persons, give in writing to you as follows: As to whatever award or settlement you two persons together will make, in accordance therewith, we agree to receive or pay. As to that, we are truly to act on our true religious faith; and we have written and delivered this writing of our free will and pleasure. The same is agreed to and approved of by our heirs and representatives, all; the 11th Jyesth Vadya Samvat 1939, the day of the event, Friday, the 1st June 1883. And as to this, you are truly to make and deliver a settlement within fifteen days' time." *Held* that the plaintiff's suit was not barred. The agreement did not indicate what was the subject-matter to be referred, and there was no evidence to show that the plaintiff's claim to maintenance had been laid before the arbitrator or that the plaintiff had refused to perform her agreement to refer in reference to that claim. Nor was there any evidence to show the time at which the plaintiff withdrew from the arbitration —whether before or after the time allowed to the arbitrators to make and publish their award, *viz.*, fifteen days. If the latter, her withdrawal could not, in any view of the section, be held to be a refusal on her part to perform her agreement to refer. Even if the plaintiff's withdrawal was unjustifiable, it appeared that the defendant had taken no steps, under s. 523 of the Civil Procedure Code (Act XIV of 1882), to have the agreement filed in Court, and thus render her withdrawal of no effect. There was nothing to show that the defendant did not acquiesce in it. *Quære*—Whether the above agreement was not void by reason of uncertainty. *Quære*—Whether the actual submission of a subject in dispute to named arbitrators, followed by the attempt of one of the parties to such submission to withdraw from or to prevent an award being made upon the submission, falls within the concluding paragraph of s. 21 of the Specific Relief Act I of 1877. ADHIBAI *v.* CURSANDAS NATHU . . . I. L. R., 11 Bom., 199

6. ———— *Arbitration—Agreement to refer—Order under s. 506, Civil Procedure Code, to refer matters in dispute in action then pending—Order under s. 373, pending the reference granting plaintiff permission to withdraw with liberty to bring fresh suit.*—The wording of s. 21 of the Specific Relief Act (I of 1877) is wide enough to cover contracts to refer any matter which can legally be referred to arbitration, and one of such matters is a suit which is proceeding in Court. The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex-parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877). *Held* that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if involving such revocation, or, if not involving it, left the order of reference still in force; that in either alternative the suit was barred by s. 21 of the Specific Relief Act; and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action *Per* TYRRELL, *J.*, that the suit was barred by the second clause of s. 373, the Court having had no jurisdiction to pass the order under that section, or, having referred the suit to arbitration, to restore the suit to its file and treat it as awaiting the Court's decision. SHEOAMBER *v.* DEODAT . . I. L. R., 9 All., 168

———— s. 22.

See INJUNCTION — SPECIAL CASES — BREACH OF AGREEMENT.
[I. L. R., 18 Bom., 702
I. L. R., 19 Bom., 764

———— s. 23 and s. 27, cl. (e)—*Contract to take shares*—S. 23, cl. (*h*), and s. 27, cl. (*e*), of the Specific Relief Act (I of 1877) do not apply to contracts to take shares; and only embody the English law as to cases where a company has taken the

SPECIFIC RELIEF ACT (I OF 1877)
—*continued*

benefit of a contract but refuses to carry it into effect. IMPERIAL ICE MANUFACTURING COMPANY *v* MUNCHERSHAW BARJORJI WADIA
[I L R, 13 Bom, 415

——— s 25

See VENDOR AND PURCHASER—TITLE
[I L R, 15 Bom, 657

s 26

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I L R, 4 Bom, 594

See SPECIFIC PERFORMANCE—SPECIAL CASES I L R, 12 Calc, 152

——— *s 27*

See VENDOR AND PURCHASER—INVALID SALES I L R, 18 Mad., 43

See VENDOR AND PURCHASER—NOTICE
[I L R 10 Calc, 710
I L R, 27 Calc, 358

Held, with reference to s 27 of Act I of 1877, that under such circumstances there was not necessarily a misjoinder of causes of action GUMANI *v* RAM CHARAN I L R, 1 All, 555

2 ——— *Agreement to convey the mortgaged property in case of default—Suit for specific performance of contract—Mortgage—First and second mortgagees* —On the 7th February 1873 *F* mortgaged the equity of redemption of a certain estate to *B* and *G* On the 7th August 1877 he mortgaged such estate to *P*, agreeing that, if he failed to pay the mortgage money within the time fixed, he would convey such state to *P*, and that if he failed to execute such conveyance *P* should be competent to bring a suit to get a sell effected and a deed of absolute sale executed' On the 6th October 1877 *F* mortgaged such estate to *B* and *D* By this mortgage the lien created by the mortgage of the 7th February 1873 was extinguished In December 1877, *B* and *D* obtained a decree against *F* on the mortgage of the 6th October 1877, and in June 1878 in execution of that decree, such estate was put up for sale and was purchased by *D* In February 1880 *P* sued *F* and *D* for the execution of a conveyance of such estate to him in accordance with *F*'s agreement of the 7th August 1877 *Held* that the mortgage of the 7th August 1877 was not in the nature of a mortgage by conditional sale and there was no necessity for *P* to take proceedings to foreclose the mortgage, and the suit was maintainable. Also that assuming that *D* had no notice of the agreement of the 7th August 1877, it was very doubtful whether under s 27 (*b*) of Act I of 1877 *D* could claim that specific performance of that agreement should not be granted, inasmuch as the contest lay between a prior and subsequent lien created upon the same property which had passed to the transferee under a sale in execution of a decree for the enforcement of the subsequent lien BADRI PRASAD *v* DAULAT RAM I L R, 3 All, 700

——— s 28

See SPECIFIC PERFORMANCE — SPECIAL CASES I L R, 18 Mad., 415

——— s 30

See LIMITATION ACT 1877 ART 113
[I L R, 5 All, 263
I L R, 16 All, 3
I L R, 23 Mad, 593

——— s 31

See DEED—RECTIFICATION
[I L R, 14 Calc, 308
L R., 14 I A, 18

——— *Landlord and tenant — Rectification or alteration of contract of tenancy—Specific Relief Act (I of 1877) s 31* —Where a party to a contract of tenancy desires to have it rectified or altered the suit should be brought under s. 31 of the Specific Relief Act ANARULLAH SHAIKH *v* KOYLASH CHUNDER BOSE
[I L R, 8 Calc., 118

S C KOYLASH CHUNDER BOSE *v* ANARULLAH SHEIKH 9 C L R., 467

——— ss. 31, 34

See CONTRACT—BOUGHT AND SOLD NOTES
[I L R., 20 Calc, 854

——— s 35

See CONTRACT ACT s 23—ILLEGAL CONTRACTS—AGAINST PUBLIC POLICY
[I L R, 3 Mad, 215

——— *Rescission of contract Suit for—Evidence necessary to set aside contract* —In order that a contract should be set aside under s 35 (*b*) of the Specific Relief Act (I of 1877) the plaintiff should be shown to have been less to blame in the transaction than the defendant HARI BALKRISHNA *v* NARO MORESHVAR
[I L R, 18 Bom, 342

ss 38 41

See ESTOPPEL—ESTOPPEL BY CONDUCT
[I L R, 26 Calc, 381

——— s 39

See DECLARATORY DECREE SUIT FOR—SUITS CONCERNING DOCUMENTS
[I L R, 7 Calc, 736
I L R., 23 Bom, 375

See LIMITATION ACT 1877 ART 91
[I L R., 5 All., 322

SPECIFIC RELIEF ACT (I OF 1877) —*continued.*

See ONUS OF PROOF—DECREES AND DEEDS' SUITS TO ENFORCE OR SET ASIDE.
[I. L. R., 12 All., 523

See RIGHT OF SUIT—INTEREST TO SUPPORT RIGHT . I. L. R., 9 All., 439
[I. L. R., 23 Bom., 375

——— s. 40 and Ch. IV, ss. 35-38—*Impossibility arising after execution of contract to perform a portion—Suit to cancel such portion.*—A contract was entered into between the plaintiff and the defendant by which the plaintiff agreed to cultivate indigo for the defendant for a specified number of years in certain specified lands situated in different villages, with respect to portion of which lands the plaintiff was a sub tenant only. During the continuance of the contract the plaintiff lost possession of those lands through his immediate landlord having failed to pay the rent and having been in consequence ejected therefrom by the owner. In a suit to have so much of the contract as related to those lands cancelled on the ground that it had become impossible of performance though no neglect on his part,—*Held* that Ch. IV (ss. 35—38) of Act I of 1877 (Specific Relief Act) did not apply to such a case, but that the plaintiff was entitled to the relief he sought under s. 40 of that Act, inasmuch as the contract was evidence of different obligations, *viz.*, to cultivate indigo in different villages. INDER PERSHAD SINGH *v.* CAMPBELL
[I. L. R., 7 Calc., 474 : 8 C. L. R., 501

——— s. 42.

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.
[I. L. R., 9 All., 622

See CASES UNDER DECLARATORY DECREE, SUIT FOR.

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N. W. P.
[I. L. R., 11 All., 224

See JURISDICTION OF CIVIL COURT—REVENUE COURTS—PARTITION.
[11 C. L. R., 533

See HINDU LAW—REVERSIONERS—ARRANGEMENTS BETWEEN WIDOW AND REVERSIONERS.
[I. L. R., 22 Calc., 354

See HINDU LAW—REVERSIONERS—POWER OF REVERSIONERS TO RESTRAIN WASTE AND SET ASIDE ALIENATIONS.
[I. L. R., 18 Mad., 53

See MADRAS LAND REVENUE ASSESSMENT ACT, s. 2 . I. L. R., 19 Mad., 292
[I. L. R., 22 Mad., 270
L. R., 26 I. A., 16

See ONUS OF PROOF—PARTITION.
[I. L. R., 16 Calc., 117

See PARTIES—SUIT BY SOME OF A CLASS AS REPRESENTATIVES OF CLASS.
[I. L. R., 15 Bom., 309

See PARTITION—MISCELLANEOUS CASES.
[I. L. R., 16 Calc., 117

See RIGHT OF SUIT—CHARITIES AND TRUSTS . . I. L. R., 8 All., 31

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . I. L. R., 7 All., 583

——— s. 45.

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 . I. L. R., 22 Calc., 717

See COMPANY—TRANSFER OF SHARES AND RIGHTS OF TRANSFEREES
[I. L. R., 16 Bom., 398

——— *Chairman of Calcutta Municipality, Discretion of, as to list of candidates and votes at elections.*—Instances of applications under s. 45 of the Specific Relief Act for rules against the Chairman of the Calcutta Municipality with regard to the list of candidates for and the votes given at municipal elections. IN THE MATTER OF MUTTY LALL GHOSE . I. L. R., 19 Calc., 192

IN THE MATTER OF RAJENDRA LALL MITTRA
[I. L. R., 19 Calc., 195 note

IN THE MATTER OF THE ELECTION OF MUNICIPAL COMMISSIONERS FOR WARD NO. 10, CALCUTTA.
[I. L. R., 19 Calc., 198

——— s. 53.

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
[I. L. R., 23 Calc., 351

——— s. 54.

See CO SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION OF BUILDINGS.
[I. L. R., 12 All., 436

See INJUNCTION—SPECIAL CASES—BREACH OF AGREEMENT.
[I. L. R., 18 Bom., 702
I. L. R., 19 Bom., 764

See INJUNCTION—SPECIAL CASES—EXECUTION OF DECREE.
[I. L. R., 22 Mad., 189

See INJUNCTION—SPECIAL CASES—INTRUSION IN OFFICE.
[I. L. R., 21 Bom., 821

See INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY.
[I. L. R., 13 Bom., 252, 674
I. L. R., 19 All., 259
I. L. R., 20 Bom., 704
I. L. R., 24 Calc., 260
I. L. R., 22 Mad., 251

See LANDLORD AND TENANT—ALTERATION OF CONDITIONS OF TENANCY—ERECTION OF BUILDINGS.
[I. L. R., 16 Mad., 407

SPECIFIC RELIEF ACT (I OF 1877) —*concluded.*

See Parties—Suits by some of a Class as Representatives of Class
[I. L R, 15 Bom, 309

See Prescription — Easements — Light and Air.
[I L. R, 13 Bom 674
I L R. 18 Bom, 474
I. L R, 20 Bom 704

See Vendor and Purchaser—Invalid Sales I L R, 18 Mad, 61

——— s 55

See Injunction — Special Cases — Obstruction or Injury to Rights of Property I L R., 14 *Calc*, 236

——— s 56

See Injunction—Special Cases—Execution of Decree
[I L R, 14 Mad, 4?5
I L R, 18 Mad, 3 8
I. L R, 23 Calc, 351
I L R, 21 Mad, 352

See Jurisdiction of Civil Court—Rent and Revenue Suits N W P
[I L R, 5 All, 429

See Parties—Suit by some of a Class as Representatives of Class
[I L.R, 22 Bom, 646

——— s 57

See Injunction—Special Cases—Breach of Agreement
[I L R, 14 Mad 18
I L R., 18 Bom, 702
I L R, 19 Bom, 764

"SPIRITUOUS LIQUOR."

See Cantonments Act 1880 s 14
[I L R, 15 Calc, 452

SPLITTING CAUSE OF ACTION

See Co sharers—Suits by Co sharers with respect to the Joint Property —Possession 7 B L R, Ap, 42

See Cases under Relinquishment or Omission to sue for Portion of Claim

See Small Cause Court Presidency Towns—Jurisdiction General Cases 6 Bom O C, 88
[4 Mad, 334
I L R., 2 Bom, 570

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See Criminal Proceedings
[I. L. R., 4 Calc., 18

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[I L. R., 19 Bom, 363

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See Interpleader Suit
[2 Ind. Jur, N S, 113

See Principal and Agent Liability of Agents 4 Bom., O. C, 125

STAMP.

	Col.
1 Bengal Regulations	8838
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[I L R, 23 Calc, 187

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[I. L R, 7 Bom, 487

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[1 N W, 17
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2 Mad, 436
I L R, 9 Bom, 355
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[I L R 18 Calc, 445

See Special or Second Appeal—Procedure in Special Appeal
[I L R, 13 All, 580
I L R, 20 Bom, 791

1 BENGAL REGULATIONS

——— Beng Reg XII of 1826—*Receipt for money not ... fee*—Under the old Stamp Law (Regulation XII of 1826) which was not registered by the Supreme Court, *agreements* not on stamped paper executed in Calcutta *bona fide* by parties residing or carrying on business therein

STAMP—*concluded*

2 BOMBAY REGULATIONS—*concluded*

1. ———— — s 14, sub-s (1)—*Deed of sale of property given in gift from what time operative*—A donee of the grantor was a third party within the meaning of Regulation XVIII of 1827, s 14 sub-s 1, and therefore as against him a deed of sale of the property given in gift was only valid from the date on which it was stamped. Precedents on this point questioned, but followed. JAGANNATH VITHAL v APAJI VISHNU 5 Bom, A C, 217

2 ———— *Purchaser at sale* ... *deed*

valid not from the ... that on which it was stamped. *Jagannath Vithal v Apaji Vishnu 5 Bom, A C, 217,* followed. NARAYAN DESHPANDE v RANGUBAI [I L R, 5 Bom, 127

3 MADRAS REGULATIONS

———— Mad Reg XIII of 1816—*No provision for payment of penalty—Secondary evidence of unstamped document*—In a suit to redeem a mortgage of 1833 executed upon an unstamped cadjan liable to stamp duty under Regulation XIII of 1816 secondary evidence of the contents of this document was tendered on payment of a penalty. *Held* that the evidence could not be admitted. KOPASAN v SHAMU I L R, 7 Mad, 440

———— Mad Reg II of 1825, s 4—*Deed transferring property conditionally—Ad valorem stamp duty*—An instrument dated 1853 which purported to be a transfer by the executant of the ... ion ... and ... ave birth to a so ... duty. REFERENCE UNDER STAMP ACT, s 49 [I L R, 16 Mad, 419

STAMP ACT (XXXVI OF 1860)

———— Security bond given to abkari renter—A security bond executed by a third party to the abkari renter is not exempt from stamp duty. RAMASAMI CHETTI v PAPPA REDDI 1 Mad, 190

———— s 14—*Bond executed on optional stamp*—No larger sum could be recovered under s 14 Act XXXVI of 1860 upon a bond executed on an optional stamp than that optional stamp covers, and no amount of penalty can make up the deficiency in the stamp. KERAMUT ALI v ABDOOL WAHAB [17 W R, 131

1 ———— sch A and s 14—*Promissory note containing agreement to waive jurisdiction*—A promissory note containing an agreement by the

STAMP ACT (XXXVI OF 1860)—*concluded*

... difference aris... note or the sub... and may be sued ... jurisdiction of which I hereby waive and agree to waive all pleas," properly stamped as a promissory note did not require an additional stamp as an agreement under Act XXXVI of 1860 sch A and s 14. RAKHAL DASS SINGHEE v ROY CHUNDER DUTT [1 Ind. Jur, O S, 124

2 ———— sch A, art 4—*Promissory* ... the following effect "On ... ourselves ... 10, being ... and the ... n account ... a hundi ... te and to ... A of Act ... HUSAIN SAHIB 1 Mad., 152

3 ———— sch A, art 20—*Partnership agreement*—An agreement on a R24 stamp paper ... from Government the ... tipulating ... by *B* for ...

[1 Mad, 226

STAMP ACT (X OF 1862)

s 3

See GENERAL CLAUSES CONSOLIDATION ACT, 1868 s 6 7 Mad, Ap, 9

1. ———— *Offence under section—Engrossing deed on unstamped paper*—The mere engrossing of a deed on unstamped paper was not an offence under s 3 of Act X of 1862 nor did the signing such deed as a witness constitute any such offence. REG v JETHA MOTI REG v VIRJI KUVARJI 2 Bom, 135 2nd Ed., 129

REG v JOTI BIN SATU 1 Bom, 37

2 ———— *Penalty — Attesting wit*...

STAMP ACT (X OF 1862)—*continued.*

be a party to," used in the section, and are therefore not punishable under it. ANONYMOUS

[3 Mad., Ap., 27

3. ———————— and s. 52—*Omission to get sanction of Collector.*—A prosecution under s. 3. Act X of 1862, not having been authorized by the Collector of the Stamp Revenue for the district or any other officer specially authorized by the Government in that behalf, was held to be, under s. 52 of that Act, irregular. QUEEN v. ADJOODHYA PERSHAD

[2 N. W., 183

1. ———————— s. 14—*Documents improperly stamped—Evidence, Admissibility in.*—Documents not bearing proper stamps under Act X of 1862 are not admissible in evidence even to show the terms of the deed as against the party producing the same. OOMRAO SINGH v. METHAB KOONWER

[3 Agra, 103a

2. ———————— *Act XXXVI of 1860—Bond stamped after suit.*—A bond stamped subsequently to the institution of a suit is valid, under the provisions of the Civil Procedure Code and of the Stamp Acts of 1860 and 1862, provided it be properly stamped when produced at the first hearing of the suit and when the Court is asked to receive it in evidence. ATMARAM GULABRAI v. AMIRCHAND RUPCHAND . . . . . 3 Bom., A. C., 92

3. ———————— *Calculation of stamp duty—Nature of instrument.*—In determining the stamp required for any particular instrument, regard must be had to the real nature of the instrument, and not to the title which may have been given to it by the parties, if the contents of the instrument show that the title is a misnomer. PENDSE v. MALSE

[3 Bom., A. C., 94

4. ———————— *Single document containing two contracts and bearing one stamp—Allowance of value of stamp.*—Where a document contained two distinct contracts requiring separate stamps, but the whole was impressed with one insufficient stamp, it was held that this stamp might be taken into account in making up the aggregate of the stamps required. BALAJI MAHADEV v. KRISHNAJI BIN CHIMNAJI . . . . 6 Bom., A. C., 95

5. ———————— *Copies of record of criminal trial—Liability to stamp duty.*—With the exception of the depositions of the witnesses and the documentary evidence and copies of the final sentences or orders passed by Criminal Courts, which parties desirous of appealing from such sentence were required by s. 416 of the Code of Criminal Procedure, 1861, to file with their petitions of appeal, when the party who was desirous of appealing was in confinement under the operation of the sentence or order at the time that he applied for a copy of the same, it was held that copies of any part of the record of a criminal trial could only be furnished to applicants on stamp paper. ANONYMOUS

[4 Mad., Ap., 58

6. ———————— *Transfer of tenure—Admissibility in evidence.*—The transfer of an under-tenure, endorsed upon the back of the tenant's pottah, is not admissible in evidence, unless it be stamped as though it were a separate deed. TETAI ABOM v. GAGAI GURA CHAWA . 3 B. L. R., Ap., 30

S. C. PITAYE AHUNG v. GIRGHEE KOER AJOOAH

[11 W. R., 335

7. ———————— *Surrender of equity of redemption—Unstamped endorsement.*—Where the defendant executed in favour of the plaintiff what purported to be a deed of absolute sale, but an ikrar executed contemporaneously reserved the right of redemption to the defendant, and the plaintiff alleged he had surrendered it by returning the ikrar, —*Held* that, as the original deed was, on the face of it, an absolute sale, and as the effect of it was merely controlled by the ikrar, the return of the latter extinguished the equity of redemption. A separate document requiring a separate stamp was unnecessary. RAJ COOMAR SINGH v. RAM SUHAYE ROY

[11 W. R., 151

———————— s. 15.

See STAMP ACT, 1879, s. 34.

[I. L. R., 14 Mad., 255

———————— s. 15, sub-s. (6)—*Application for remission of stamp duty in pauper suits.*—It is not the duty of a Civil Court to receive and submit to the Board of Revenue an application from a pauper plaintiff for remission or mitigation of penalty under the stamp law; the pauper should himself make timely application under sub-s. 6, s. 15, Act X of 1862. GOLAM GUFFOOR v. EKRAM HOSSEIN CHOWDHRY

[10 W. R., 358

———————— ss. 15 and 17.

See APPELLATE COURT—REJECTION OF ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS.

[3 B. L. R., A. C., 126, 235
5 B. L. R., Ap., 10
7 B. L. R., 653
I. L. R., 5 Bom., 621
2 Mad., 321
3 Mad., 71

———————— s. 17.

See APPEAL—ACTS—STAMP ACT, 1862.

[3 Bom., O. C., 153

1. ———————— *Insufficient stamp.*—S. 17 of Act X of 1862 only applied to the reception of documents under s. 15, which had been insufficiently stamped, not to documents on which there was no stamp. Such documents should not be received at all. LALJI SINGH v. AKRAM SER

[3 B. L. R., A. C., 235: 12 W. R., 47

2. ———————— *Intention to evade stamp laws.*—A bond, executed between a plaintiff who sued upon it and the defendants, contained the following clause: "And inasmuch as we (the defendants) are urgently in want of money, and are unable to procure a stamp at the moment, we have executed the bond on plain paper. Should it be necessary for you (plaintiff) to bring a suit against us, whatever penalty

STAMP ACT (X OF 1862)—*continued.*

you may have to pay shall be made good by us, with interest" The Small Cause Court Judge, before whom the case was tried, considered the above clause in the bond to be evidence of an intention between the parties to avoid the stamp laws and refused to receive evidence to the contrary He also refused to admit the bond in evidence *Held*, on reference to the High Court, that the clause in question did not amount to an agreement to evade the stamp laws. The Judge might have inferred from it that it was the intention of the parties to evade the stamp laws but in that case he should have heard evidence to the contrary SASHI BHUSHAN BANERJEE *v.* TARACHAND KAR

[3 B. L. R., A. C., 329: 11 W. R., 553

3. ———— *Intention to evade payment of duty* — A Court to which a document is tendered in evidence under this section ought not to reject it, unless it clearly appears that there was an intention to evade the payment of stamp duty ROYAL BANK OF INDIA *v.* HORMASJI KHARSEDJI

[3 Bom., O C., 153

4. ———— *Permission to pay penalty where document is lost.—Quære* Whether permission to pay the stamp duty and penalty can be given in the case of a lost instrument. ARUNACHELLUM CHETTY *v.* OLAGAPPAH CHETTY . 4 Mad., 312

5 ———— *Hundi—Inadmissibility in evidence for want of stamp* —The plaintiff brought a suit against three defendants under the following circumstances The third defendant was the tenant of a village under the second defendant the first defendant being the agent and manager of the second defendant. The third defendant owed the second defendant a sum of money on account of rent, and drew a hundi on the plaintiff for R1,000 to be paid to the first defendant or order, and containing these words. "For which amount I shall deliver over to you grain in that village and its hamlets, and for which the Dewan (first defendant) will issue an order to the above effect" The hundi was upon a one anna stamp. Plaintiff, on receipt of this hundi, drew upon the back of it another hundi upon his mother-in-law in the following terms. "On demand [illegible]

[illegible] said Mahomed Rahimatulla Shaib, the Dewan of Venkatagiri" This was signed by the plaintiff, and beneath his signature was that of the first defendant The amount mentioned in the hundi was [illegible]

[illegible] failed to fulfil his engagement. The Civil Judge decreed for the plaintiff On appeal — *Held* by the High Court *reversing* the decision of the Civil Court, that the second hundi was not admissible in evidence, not being stamped, and that there was no evidence of such an agreement as that relied on by the plaintiff. MAHOMED RAHAMATULLA *v.* WARD . . . 5 Mad., 331

STAMP ACT (X OF 1862)—*continued.*

6. ———— and s. 15 — *Intention to evade payment of duty—Jurisdiction.*—In a suit brought in a Small Cause Court to recover money, being a debt secured by a hissab entered on a leaf of a khatta book, where the defendant objected to the admission of the leaf as evidence, because it did not bear a proper stamp,—*Held* that under ss 15 and 17, Act X of 1862, it was competent to the Judge to find, on the facts before him, whether the absence [illegible]

[13 W. R., 102

7. ———— *Insufficiently-stamped document—Procedure—Admissibility in evidence* — The plaintiff sued his elder brother for a share in certain family property The defendant raised a question of family custom and relied on a certain deed of release which he said the plaintiff had given him, but the existence of which the plaintiff denied. That document was not stamped, though, on the face of it, it stated that it was to be stamped No objection was taken on that score to the document before the first and lower Appellate Courts, who considered that the document was a genuine document executed by the plaintiff. After its production, it had an insufficient stamp of two annas put upon it. The [illegible]

[illegible] might have refused to admit the document for want of a stamp, or—which would be more correct—it might have required it to be properly stamped and the penalty paid into Court, but the [illegible]

[illegible] Moore's I. A., 24

1. ———— s 22—*Promissory note—Interest.*—A promissory note is sufficiently stamped if the stamp covers the principal sum named in the note without reference to the interest. GOMEZ *v.* YOUNG

[2 B. L. R., O. C., 165: 12 W. R., O. C., 1

2 ———— *Promissory note—Admissibility in evidence* —*A B*, by an instrument in writing, dated 6th August, promised to pay *C D*, "on demand," R4 310 13 3 In the margin of the instrument was written due "30th August," and an[illegible]

[illegible] demand ought to be stamped as such, notwithstanding there may be a collateral agreement between the parties that the holder will not present it for a given time, or if paid on demand that the maker shall be

STAMP ACT (X OF 1862)—*continued.*

entitled to discount. CHANDRAKANT MOOKERJEE *v.* KARTIKCHARAN CHAILE

[5 B. L. R., 103: 14 W. R., O. C., 38

3. ———— ————— *Promissory note—Ambiguity.*—Where the wording of a promissory note bearing a one anna stamp appears to be ambiguous as to whether it is payable on demand, the Court will take the evidence of the parties as to the intention, and will then decide whether it is properly stamped. Under such circumstances, the Court will take evidence of usage. BANK OF HINDUSTAN, CHINA, AND JAPAN *v.* SEDGWICK . 1 Ind. Jur., N. S., 107

s. 26.

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.

[1 Mad., 217
12 W. R., 376

— *Refund of stamp duty—Commencement of suit.*—*Held* that, for the purpose of refund of half stamp duty under s. 26 of Act X of 1862, the hearing of a suit in a Small Cause Court commenced when proof of the service of the summons was taken on the day appointed for the hearing; and where proof of the service of the summons had been previously taken, it must be considered as taken at the commencement of the proceedings on the day appointed for hearing. AMIRCHAND JAMNADAS *v.* MAGGAN AMTHU . 4 Bom., A. C., 176

———— s. 27—*Right to recover on contract only amount covered by stamp where stamp is optional.*—Where a written contract liable to an optional stamp is put in evidence by the defendants, the plaintiffs cannot recover a larger amount under it than (if stated) the optional stamp upon the instrument would have been sufficient to cover. In a suit for the recovery of money due under a written contract the defendants admitted that a sum of R6,328-4-0 was due to the plaintiffs, subject to certain deductions which they claimed to be entitled to set off against the plaintiffs' claim. The defendants put in evidence the written contract, the stamp upon which was only sufficient to cover the sum of R5,000. *Held* that, notwithstanding the admission of the defendant, the plaintiffs could only recover R5,000 in the suit. KISTNASAMY PILLAY *v.* MUNICIPAL COMMISSIONERS FOR THE TOWN OF MADRAS . 4 Mad., 120

———— s. 32—*Appeal on valuation of claim.*—Under s. 32, Act X of 1862, an appeal relating to the valuation of a claim can be entertained by the High Court. BASOO MAD FUROSH *v.* HUREE PANDEY . . . . . 11 W. R., 479

———— s. 50, sub-s. (2)—*Jurisdiction of Collector—Offence under Criminal Procedure Code (Act XXV of 1861), ss. 169, 171.*—An application was made to a Collector under s. 50, sub-s. (2), Act X of 1862, to replace a damaged stamp by a new one. As it appeared that the stamp had been tampered with for fraudulent purposes, the Collector made over the parties to the Magistrate for trial. *Held* that, the document not having been given in evidence in any proceeding in Court, the Collector was not bound to proceed under ss. 169, 171 of the Criminal Procedure Code. QUEEN *v.* GOUR MOHAN SEN

[3 B. L. R., A. Cr., 6: 11 W. R., Cr., 48

———— sch. A, art. 1—*Promissory note for payment of grain.*—An instrument in the form of a promissory note for grain should be stamped, under art. 1 of sch. A of Act X of 1862, with a stamp of the value of one rupee. LACHIRAM JAYASANGJI *v.* RAMJI BIN SHIVAJI . . 6 Bom., A. C., 107

———— art. 3—*Petition for a lease*—In a suit for payment of rent for use and occupation of land, where the basis of plaintiff's claim was for a kabuliat, the agreement produced as evidence of the contract, not being the deed of contract itself, was held to be not liable to be stamped under art. 3, sch. A, Act X of 1862. CHOONEE MUNDUR *v.* CHUNDEE LALL DASS . . . 14 W. R., 334

Affirming on review S. C. . 14 W. R., 178

1. ———— art. 4—*Agreement—Bond.*—In a suit for breach of contract to cultivate and deliver indigo, for recovery of the amount specified in the contract,—*Held* the stamp duty depended on the amount of consideration for the undertaking. DOYLE *v.* MUNDAREE MUNDUL

[5 W. R., S. C. C. Ref., 10

2. ———— and art. 15—*Agreement to supply cotton.*—An agreement to supply cotton in consideration of a sum of money received should be stamped under art. 4, and not under art. 15, sch. A, Act X of 1862. SAMSUDDIN SULTAN *v.* RAMJI BHIKA . . . 5 Bom., A. C., 151

1. ———— art. 10—*Promissory note—Bond.*—A promissory note, attested by a witness, does not require to be stamped as a bond under Act X of 1862, sch. A, art. 10. The words in that clause "not being a bond, instrument, or writing bearing the attestation of one or more witnesses," referred only to the preceding words, "other order or obligation for the payment of money." Also the words "bearing the attestation of one or more witnesses" apply only to the words "instrument or writing," and not to the word "bond." GLADSTONE *v.* SADOO CHURN DUTT

[2 Ind. Jur., N. S., 203

2. ———— *Promissory note.*—In a suit, brought by a joint-stock company in liquidation against a former director of the company, for R27,30,000 on a promissory note, dated the 1st of March, and purporting to be paid on demand, but with the words in pencil "due 4th June" put on it, the same day it was signed, in accordance with an understanding between the defendant and the other directors that they would not press him for payments before the latter date, and signed by the defendant some days after the day it bore date,—*Held* that a one-anna stamp was not sufficient under sch. A, art. 10, of Act X of 1862. EASTERN FINANCIAL ASSOCIATION *v.* PESTANJI CURSETJI

[3 Bom., O. C., 9

3. ———— *Written direction by master to servant for payment of money.*—A written direction given by a master to a servant for the payment of money belonging to the former in the hands

STAMP ACT (X OF 1862)—*continued*

of the latter was held to be not an order for the payment of money within the scope of the terms used in art 10, sch A, Act X of 1862, as amended by Act XXVI of 1867 PUTBULWANT RAO *v* FUTTEHOODDEEN 1 N. W, Ed 1873, 143

1 ———— art. 12—*Security bonds for costs of appeal to Privy Council*—Security bonds for costs of appeal to the Privy Council come within art 12 sch A, Act X of 1862, and ought to be executed on a stamp as therein specified SOONJHAREE KOONWUR *v* RAMESSUR PANDEY [5 W. R, Mis, 47

2. ———— *Solehnamah admitting satisfaction of decree — Petition — Agreement — Act XXVI of 1867, art 10*—In a suit upon a bond for R40 with interest, the defendant filed a solehnamah admitting that the amount due from him was R25 and agreeing to pay that sum by instal ...

for an instalment bond MANICK ... *v* LALLMON SHEIKH PUNCHANUN SIRCAR *v* GUNESH MUNDUL . 8 W. R, 214

———— art. 18—*Penalty—Obligation for payment of money*—Where the parties to an ...

non performance, at the appointed time, of the work ...

DEWAN SINGH 2 N. W, 400

———— art 42—*Lease—Instrument ... of landlord and tenant* ...

1 ———— art 43—*Sanad to gomashta to collect rents*—A sanad, which authorized a gomashta to collect rents and to sue for them, requires to be ... stam... RAG...

2 ———— *Instrument operating as power-of-attorney*—J M executed in favour of P an instrument authorizing P to recover, by suit or otherwise, from Messrs W and N, a sum of R22,500 (or thereabouts) which contained this clause "From whatever sum P may recover from W and N he is to ...

STAMP ACT (X OF 1862)—*concluded*

of-attorney, and not as an assignment, and was properly stamped under Act X of 1862 sch A, art 43, with a stamp of R4 PESTANJI MANCHARJI WADIA *v* MATCHETT 7 Bom, A. C, 10

———— art 54—*Deed of partition—Each sharer's copy of an instrument*—Under Act X of 1862, sch A, art 54, each sharer's copy meant ...

unstamped,—*Held* that it should be stamped as each sharer's copy of an instrument under Act X of 1862, sch A, art 54 NARAYAN RAGHUNATH *v* KASHINATH I L R, 8 Bom., 299

1 ———— sch B, art 11—*Suit for declaration of title to portion of land paying revenue to Government—Interest in land*—A suit for the declaration of title to a fractional share in a zamindari paying revenue to Government is not a suit "for lands forming one entire mehal or a specific portion thereof with a defined jumma" such share being "an interest in land" should be valued according to the provisions of note (*e*) art 11 sch B Act X of 1862 RAJ CHUNDER ROY *v* CHUNDEER CHURN NAIK [8 W R, 437

2 ———— *Time for obtaining copy of decree* The rule of circular No 31, ...

paper filed under the general rule at end of sch B, Act X of 1862, when the copy cannot be comprised within the stamp paper put in CHUMUN CHOWDHRY *v* ALI AZIM 9 W. R., 138

3 ———— *Suit for resumption—"Revenue"*—A suit to resume lands as lakhiraj fell in respect of stamp duty under cl (*d*), art 11, sch B of Act X of 1862 The term "revenue" in cl (*d*) must be read as meaning revenue or rent, whether to Government or to a zamindar GOPEE MOHUN MOJOOMDAR *v* MACKINTOSH 9 W. R., 395

STAMP ACT (XXVI OF 1867)

See UNDER COURT FEES ACT, XXVI OF 1867.

STAMP ACT (XVIII OF 1869)

See GENERAL CLAUSES CONSOLIDATION ACT (I OF 1868), s. 3 7 Mad, Ap, 9.

1. ———— *Insufficiency of stamp.*—The Civil Court is authorized, under Act XVIII of 1869 to receive the proper amount of stamp which should have been affixed on the plaintiff's pottah under the law in force when it was executed. MAHOMED RIJAH *v* COLLECTOR OF CHITTAGONG [6 B L. R., Ap, 117: 15 W. R., 116

STAMP ACT (XVIII OF 1869)—*continued.*

2. ———— *Agreement executed both in England and India—Liability to stamp duty—Admissibility in evidence.*—An agreement was first executed in England by *D* and *E*, and by *A*, the senior partner in the firm, and stamped with the stamp required by English law for agreements executed in England, and it was subsequently executed in India by *B* and *C*, the other two partners, but not stamped with an Indian stamp. *Held* that the agreement was liable to Indian stamp duty, and was not admissible in evidence unless and until the proper stamp duty and penalty under Act XVIII of 1869 were paid. OAKES *v.* JACKSON

[I. L. R., 1 Mad., 134

3. ———— *Orders on tenants to pay rent to person to whom landlord has executed release.*—Orders upon tenants to hold themselves responsible to a particular person to whom a release has been made by their landlord are not documents which the law requires to be stamped, and ought not to be rejected as evidence on the ground of their not being stamped. BUKSHEE KUNNEE LALL *v.* THAKOORNATH SAI . . . . . **25 W. R., 80**

1. ———— **s. 3, sub-s. (5)**—*Bond—Definition of bond.*—The definition of the word "bond" in the Stamp Act of 1869 is not exhaustive; the word "includes" in sub-s. 5 of s. 2 has an extending force, and does not limit the meaning of the term to the substance of the definition. IN THE MATTER OF THE PETITION OF NASIBUN. NASIBUN *v.* PREOSUNKER GHOSE . . . **I. L. R., 8 Calc., 534**

2. ———— *Entry of loan in account books.*—Entries of loans in account books cannot be treated as bonds within the meaning of sub-s. (5) of s. 3 of Act XVIII of 1869. QUEEN *v.* BULDEO . . . . . **2 N. W., 453**

1. ———— **sub-s. (11)**—*Conveyance.*—An instrument, which purports to convey two or more properties for a sum of money, composed of items described in the instrument as the values of those properties, is simply a deed of sale coming under the definition of "conveyance" in Act XVIII of 1869, s. 3. The stamp duty, properly leviable upon such an instrument, should therefore be calculated upon the aggregate sum specified therein, and not upon the various items composing that sum. IN RE TUKARAM HARI ATRE . . **10 Bom., 354**

2. ———— *Sale-certificates—Conveyance—Mad. Act VIII of 1865, ss. 35 and 40.*—Certificates of sale issued under ss. 35 and 40 of Madras Act VIII of 1865 are not conveyances subject to stamp duty. ANONYMOUS . **8 Mad., 112**

1. ———— **sub-s. (15)**—*Lease—Contract to pay sum of money in consideration of a grant.*—An engagement by a proprietor of land to pay to a superior a sum of money in consideration of a grant of the right to farm dues, in the nature of revenue, is a "lease" within the meaning of the General Stamp Act, 1869. COLLECTOR OF TANJORE *v.* RAMASAMIER . . . **I. L. R., 3 Mad., 342**

STAMP ACT (XVIII OF 1869)—*continued.*

2. ———— *Second lease altering first stamped and registered.*—After a complete lease has been executed, stamped, and registered, if another document is prepared and executed with a view to alter the first, and substitute new terms so far as the rent is concerned, it requires, under the Stamp Act, to be itself stamped with the stamp provided for a lease. BYJNATH DUTT JHA *v.* PUTSOHEE DOBAIN

[20 W. R., 36

———— **sub-ss. (18) and (26) and sch. I, art. 10**—*Mortgage—Pledge by letters of assignment of property not in esse.*—*M*, the manager of an indigo concern, appointed under s. 243 of Act VIII of 1859, without communicating with *A* and *B*, mortgagees of the concern, and with only the verbal sanction of the Court, applied to the plaintiffs for money, and on the 26th April the plaintiffs wrote to *M* that they would make advances to the extent of R50,000, upon his assigning to them and giving them a first charge on the first 250 maunds of indigo to be manufactured in the season, and they enclosed a form of assignment for *M*'s signature, which he duly signed, and returned to the plaintiffs on the 3rd May. This document bore a 2-rupee stamp. In September and October *M* obtained further advances from the plaintiffs in respect of other indigo, giving them similar letters of assignment, which also bore 2-rupee stamps. The indigo, when manufactured, was claimed by *A* and *B* under their mortgage, and their claim being resisted by *M*, who set up against them the plaintiff's rights under the letters of assignment, *A* and *B* brought a suit to enforce the provisions of their mortgage-deed. In this suit the indigo was attached before judgment and sent to Calcutta for sale. The plaintiffs now sued *A*, *B*, *M*, and the holders for sale to establish their first charge in respect of their advances to *M* upon 360 maunds of the indigo on the strength of their letters of assignment. *Held per* GARTH, *C.J.*, and MACPHERSON, *J.*, that the letters of assignment to the plaintiffs were not mortgages within the definition of the Stamp Act, XVIII of 1869, and that the proper stamp to be affixed to such document was a stamp of 8 annas. MORAN *v.* MITTU BIBEE . . . **I. L. R., 2 Calc., 58**

1. ———— **sub-s. (25)**—*Promissory note insufficiently stamped—Express contract.*—A suit on a promissory note payable on demand which was not stamped was held to have been rightly dismissed, the note being inadmissible as evidence with reference to Act XVIII of 1869, s. 3, sub-s. 25. *Held* that in such a case the plaintiff, if he recovers at all, must do so on the contract actually made and not on any implied contract. ANKUR CHUNDER ROY CHOWDHRY *v.* MADHUB CHUNDER GHOSE . **21 W. R., 1**

2. ———— *Promissory note—Bond.*—The defendant, having borrowed R50 from the plaintiff, gave him, on the 9th November 1878, an instrument, which was in effect as follows: "*B* (defendant) writes this 'rukka' in favour of *A* (plaintiff) for R50 cash received, to be repaid on the 13th November 1878: in the event of default, he shall pay interest at R1 per diem. *Held* (STUART, *C.J.*, dissenting) that such instrument was a "promissory note" within the meaning of the Stamp Act

STAMP ACT (XVIII OF 1869)—*continued*

of 1869, and not a "bond" or "an agreement not otherwise provided for," within the meaning of that Act BANSIDHAR *v* BU ALI KHAN

[I. L. R., 3 All., 280

3. ———— and sch. II, art 5—*Note or memorandum acknowledging debt—Promissory note—Insufficiently stamped document, Admissibility in evidence of*—The plaintiff sold and delivered certain goods to the defendant The defendant gave the plaintiff, in respect of the price of such . th Nov sum of This inadhesive ent suit from the defendant R200, and interest on that amount at 12 per cent per annum from the 14th November 1877 to the date of suit *Held* by STUART, *C J*, and PEARSON, *J*, and OLDFIELD, *J*, and STRAIGHT, *J*, treating the suit as one for a debt, that although such instrument was not admissible in evidence as a promissory note, as it was insufficiently stamped it was nevertheless admissible as proof of an acknowledgment of such debt *Per* SPANKIE *J*, treating the suit as based upon a promissory note, that such instrument, being insufficiently stamped, was not admissible in evidence KANHAYA LAL *v* STOWELL . I L R., 3 All, 581

See BENARSI DAS *v* BHIKARI DASS

[I L R., 3 All, 717

GOPAL CHAND MARWAREE *v* MOHOKOOM KOOAREE . . I. L. R, 3 Calc, 314

and AKBAR *v* KHAN . I. L. R., 7 Calc, 256

———— s 4—*Document executed in foreign territory*—An unstamped instrument executed in foreign territory, and valid under the law of the place of execution, is admissible as evidence in Courts of B any propert of 1869, s BALAL

———— s 9—*Account stated—Interest.*—Under Act XVIII of 1869, s 9, a one anna stamp is the proper stamp for a document containing an account stated, and stipulating for payment of interest GIRDHAR NARAN *v* UMAR AJU

[I L R., 4 Bom, 326

1.———— s. 18—*Admission in written statement and evidence—Quære*—Although there have been decisions in the English Courts upon the Stamp Act which support the contention that a defendant's written statement and deposition may contain such an admission as renders it unnecessary for the plaintiff to put the written contract in evidence, yet do

2. ———— and sch I, art 14, and sch. II, art 36—*Admissibility of unstamped document for collateral purpose*—The plaintiff, as administrator of *D*, sued to recover from the defendants the sum of R3,000, alleging that, in February 1878, the said sum had been entrusted to defendant

by whom it had been lent to defendant No. 3, and that defendant No 3 had duly repaid it to *P*. In the defendants' gift to *P* ha 1878, and e trial. At t

in evidence, the document was objected to as being unstamped and therefore inadmissible *Held* that

effect to it as operative between the parties to it RUSTOMJI EDULJEE CROOS *v* CURSETJEE SORABJEE CROOS I. L. R., 4 Bom, 349

3 — ———— *Document referred to as basis of suit inadmissible as being unstamped*—

with reference to the law of limitation), notwithstanding that he had in his plaint referred to such document as the basis of his suit NOOR BIBEE *v* RUMZAN . . 4 W. R, 198

———— s 19.

See STAMP ACT, 1879, s 26

[I. L R, 3 Mad, 342

———— s 20.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS

[I. L. R, 4 Calc, 213

See SPECIAL OR SECOND APPEAL—GROUNDS OF APPEAL—EVIDENCE, MODE OF DEALING WITH

[10 Bom., 406

1. ———— *Hundi—Insufficient stamp—Evidence*— dis cannot be of a penalty MOTHOORA M

2 ———— *Bond written partly on one and partly on another paper—Deficiency in stamp.*—A bond written partly on one and partly on another

STAMP ACT (XVIII OF 1869)—*continued.*

stamp paper, the two aggregating the proper stamp leviable, was tendered in evidence without the certificate required by s. 49 of the Stamp Act. *Held* that there was a deficiency in the stamp on the bond, and therefore a liability to the penalty under s. 20. The deficiency must be calculated to be equivalent to the difference between the value of the stamp on one of the papers, and the whole value chargeable. ANONYMOUS . . . 7 Mad., Ap., 36

3. ——— *Lost deed proved to be unstamped.*—In cases where a lost deed is shown not to have been stamped, the Court should require the same money to be paid, as if the deed itself were produced. HARAN CHUNDER BHOOREE *v.* RUSSICK CHUNDER NEOGY . . . 20 W. R., 63

4. ——— and s. 22—*Admission of unstamped document on payment of penalty.*—Where a Subordinate Judge admitted an unstamped document after payment of stamp duty and penalty under Act XVIII of 1869, s. 20, and endorsed on it a certificate that the proper stamp had been levied, but found out afterwards that the original omission was owing to an intention to evade payment of stamp duty,—*Held* that the certificate was not such as was contemplated by s. 20, and did not make the document admissible; and that the Judge ought, under s. 22, to have impounded the document and sent it to the Collector. PROSUNNO NATH LAHIREE *v.* TRIPOORA SOONDUREE DABEE . 24 W. R., 88

——— s. 24 and ss. 29 and 44—*Evasion of stamp law—Promissory note not duly stamped.*—That which the Magistrate has to adjudicate upon on a prosecution coming before him, under s. 24 of the Stamp Act, is whether an offence against the Act has been committed, and whether the prosecution has been brought before him by the proper officer. Any person who makes himself liable by committing an offence within the terms of s. 29 and the following sections, and who is prosecuted by the Collector or other officer duly empowered, may be convicted by the Magistrate under s. 44. If an instrument called a promissory note or other document of that kind and as such liable to the duty imposed by the Act is not duly stamped, the person subject to penalty is the person who makes it, and not the person in whose favour it is made. The Magistrate of the district should not himself try a case in which he instituted the prosecution as Collector. QUEEN *v.* NADI CHAND PODDAR . . 24 W. R., Cr., 1

1. ——— s. 28—*Document requiring anna stamp—Stamp affixed subsequently to execution of document.*—A document which by law requires a one-anna adhesive stamp to be affixed must be received in evidence, if, at the time of its being tendered, it bears the requisite stamp, even though such stamp has been affixed subsequently to the execution of the document. BHAURAM MADAN GOPAL *v.* RAMNARAYAN GOPAL . . . . 12 Bom., 208

NOOR BIBEE *v.* RUMZAN . . 24 W. R., 198

KALI CHURN DAS *v.* NOBO KRISTO PAL [9 C. L. R., 272

STAMP ACT (XVIII OF 1869)—*continued.*

2. ——— *Power to receive in evidence unstamped note on payment of penalty.*—Under s. 28 of Act XVIII of 1869, a Court has no power to admit in evidence an unstamped promissory note (payable on demand or otherwise) upon the payment of the stamp duty and the penalty laid down in s. 20 of that Act. DOSABHAI KAVASJI *v.* KHERBADJI HORMASJI . . 7 Bom., O. C., 180

3. ——— *Promise to pay money and grain—Promissory note.*—A document which contains a promise to pay money and a certain quantity of grain is not a promissory note for the purpose of the General Stamp Act, 1869, s. 28. MUTTU CHETTI *v.* MUTTAN CHETTI . . I. L. R., 4 Mad., 296

4. ——— *Promissory note—Admissibility in evidence.*—In a suit brought on the following document, dated 25th October 1869: "Whereas I, defendant, have borrowed R1,500 from you without interest without a bond, hence I declare that I shall repay, on or before 15th Falgun, the whole amount as one sum and take back this chitta: should I fail to repay the amount in question on the above date, I will pay interest on the same,"—it was objected that, the document being unstamped under s. 3, Act X of 1862, the Stamp Act in force at the date of its execution, it was inadmissible in evidence, and it was contended for the plaintiff that it was admissible on payment of the penalty. The Judge applied s. 28, Act XVII of 1869, and held he had no power to receive it on payment of the penalty. *Held* the Judge was bound to comply with Act XVIII of 1869, and was therefore right in refusing to receive the document. *Held* also the document was a promissory note within s. 28, Act XVIII of 1869. NANDAN MISSER *v.* CHATTER BATI [13 B. L. R., Ap., 33

S. C. NUNDUN MISSER *v.* CHITTUR BUTTEE [21 W. R., 446

5. ——— *Promissory note—Insufficiency of stamp.*—The following document, bearing a one-anna stamp, was admitted by the Court of first instance and accepted by the lower Appellate Court as bearing a sufficient stamp: "My dear sister *M*—Be it known that R750 on account of the former note of hand and R225 of to-day's date, amounting in all to R975, are due to you by me. I promise to pay you this sum in two months. I am already negotiating for a loan from another place. Rest assured no harm will come to your money, and for your satisfaction and security this note of hand is given to you. Keep this as a voucher and consider the former note of no use. At the time of payment this note is to to be returned to me." *Held* that the document was a promissory note, and should have borne a stamp of 12 annas. The deficiency in the stamp could not have been supplied when the document was offered in evidence. MAKBUL AHMAD *v.* IFTIKHARUNNISSA BEGUM . 7 N. W., 124

6. ——— *Document on one-anna stamp—Admissibility in evidence on payment of penalty.*—A promissory note upon a one-anna stamp dated in August 1870 provided for the repayment

STAMP ACT (XVIII OF 1869)—*continued*

of the amount mentioned in it on or before the 12th July 1871. In a suit upon the promissory note,—*Held* that it was not receivable in evidence upon payment of a penalty CHINNA PERUMAL NAICKER v ANNAMMAL . 7 Mad., 361

1 ———— s 29—*Prosecution by Collector—Intention to evade payment of stamp duty*—A Magistrate is bound, for the purpose of ascertaining whether any and what penalty should be imposed, to consider whether a person prosecuted under s 29 Act XVIII of 1869, had any intention to defraud by evading payment of stamp duty EMPRESS v DWARKANATH CHOWDHRY I. L. R., 2 Calc., 399

2 ————, *Intention to evade payment of duty—Donor and donee of deed of gift*—Intention to evade payment of stamp duty is not an essential ingredient in the offence described in s 29 of Act XVIII of 1869 *Held* that the donor under a deed insufficiently stamped was properly convicted, but that the donee had committed no offence under the section ANONYMOUS . 6 Mad, Ap, 5

———— ss. 34 and 41 and sch II, arts 5 and 20—*Collateral instrument—Policy of Insurance—Assignment and re transfer by endorsement*—A policy of insurance bore three endorsements the first, an assignment of all the right, title, and interest of the assured to the P Bank, the second a retransfer from the P Bank to the assured, all claims having been satisfied, the third, an assignment by the assured similar to the first assignment to Messrs *B R S & Co* *Held* by MARKBY and AINSLIE, *JJ*, that the first and third endorsements were liable, as collateral instruments under sch II, art 20, of the General Stamp Act, to a stamp of one rupee, and that the second endorsement was not chargeable with stamp duty *Held* by GARTH, *C J*, that none of the endorsements were chargeable with duty IN THE MATTER OF THOMPSON S POLICY I L R, 3 Calc, 347

———— ss 39 40 *Promissory note—Evidence*—A promissory note not payable on demand, executed on unstamped paper, was brought to a Collector, under s 39 of Act XVIII of 1869, for adjudication as to the proper stamp, who, upon the payme [illegible]
made
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missor
Das v [illegible]

———— s 43

See COLLECTOR I. L. R, 2 All, 806

See MAGISTRATE, JURISDICTION OF—SPECIAL ACTS—STAMP ACT 1869
[I L R., 3 Calc, 622

1 ———— sch I and sch. II, art 11—*Bond for payment of money*—The plaintiffs drafted the following letter, dated 5th June 1871, and sent it to the defendant for signature "I have this day sold to you 500 to 700 cases of first quality of hogs lard of my manufacture and mark at R43 per case of eight tins of ten seers each, or two bazar maunds

STAMP ACT (XVIII OF 1869)—*continued*.

nett, as usual, delivery to be given and taken in all twelve months, as it is prepared, by instalments of forty to sixty cases at a time from my manufactory, commencing from this day Cash on delivery of each lot I engage not to sell any hogs' lard to any party besides yourselves, nor to make any shipments during the term of this contract without first obtain- [illegible]

of hogs' lard when ready and after I have given you notice in writing, you must render yourselves similarly liable to a penalty of R5 000 as and by way of liquidated damages" This letter was signed by the defendant, and, as the plaintiffs alleged, formed the contract between them The letter bore a stamp of one anna In an action for a breach of the contract, it was tendered in evidence by the plaintiffs and objection was taken to it that it was insufficiently stamped, and that it required an *ad valorem* stamp as being a bond for the payment of money under Act XVIII, of 1869, sch I *Held* it was a document which required an 8 anna stamp only under art 11 of sch II of the Act and the document was admitted on payment of the stamp and penalty ROBERT AND CHARRIOL v SHIRCORE
[7 B L R, 510

2 ———— *Letter assigning chose in action out of British India*—A letter by which a chose in action (a debt) was equitably assigned does not require a stamp where the chose in action is not in British India at the time of the assignment. MEGJI HANSRAJ v RAMJI JOITA
[8 Bom, O C, 169

1. ———— art. 15—*Conveyance—Shares in public company—"Amount"*—No *ad* [illegible]

that Act signifies the sum total, or amount of money, forming the consideration, and the words "or secured" apply only to cases of mortgages and the like, not to an out and out conveyance IN THE MATTER OF PORT CANNING LAND COMPANY
[16 W. R, 208

2 ———— *Conveyance — Indemnity bond*—Where a document, purporting to be a [illegible]

I. L. R., 1 Mad, 133

1. ———— sch II, art. 5—*Adjustment of account*.—An adjustment of account is not admissible

STAMP ACT (XVIII OF 1869)—*continued.*

in evidence unless stamped with a one-anna stamp. TARINEY CHURN NUNDY *v.* ABDUR ROHOMAN [2 C. L. R., 346

2. ———— *Balance of running account.*—In a running account, a balance brought forward from the close of a previous year is not to be considered a new balance requiring a fresh stamp; Act XVIII of 1869, sch. II, art. 5, providing for one stamp only to be affixed in such a case. INDRA CHAND ASWAL *v.* KALEE DOSS MITTER [24 W. R., 439

3. ———— *Note or memorandum balancing an account.*—On the 9th October 1875 the book containing the accounts between the plaintiff and defendant kept by the plaintiff was examined by the parties and a balance was struck in the plaintiff's favour which was orally approved and admitted by the defendant. In a suit by the plaintiff for the amount of this balance "on the basis of the account book,"—*Held* that the entry of the balance struck, not being signed by the defendant, was not a note or memorandum of the kind mentioned in art. 5, sch. II of Act XVIII of 1869, and did not therefore require to be stamped. NAND RAM *v.* RAM PRASAD [I. L. R., 2 All., 641

4. ———— *Hath-chitta—Balance of accounts.*—A hath-chitta, drawn up by only one of two parties to a money transaction, and purporting to represent the balance of accounts between them but not assented to in any way by the other party, is not such a document as is contemplated by art. 5, sch. II of the General Stamp Act, and does not require to be stamped. KOONJO MOHUN DOSS *v.* KRISHNA CHUNDER SHAHA . 25 W. R., 361

5. ———— *Stamp on entry in hath-chitta.*—When an account in a hath-chitta has two sides to it, the one headed "amount advanced" and the other headed "amount received," and the amount actually due on such account varies from time to time, and depends upon the relation of the amount advanced to the amount received, and the signature or seal of the borrower is affixed to each entry showing an advance, such an entry is not a note or memorandum whereby any debt is acknowledged to be due, and does not require a stamp under art. 5, sch. II of Act XVIII of 1869. BROJENDER COOMAR *v.* BROMOMOYE CHOWDHRANI [I. L. R., 4 Calc., 885 : 3 C. L. R., 520

BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA . . . I. L. R., 9 Calc., 127

———— *art.* 5 *and art.* 11.

See APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED BY COURT BELOW—UNSTAMPED DOCUMENTS . I. L. R., 4 Calc., 213

———— art. 7—*Bank memorandum—Receipt.*—A bank memorandum informing one of their customers that money has been paid to his account by a third person, and has been credited to that account, does not require to be stamped under art. 7, sch. II of Act XVIII of 1869. IN THE MATTER OF ACT XVIII OF 1869, AND OF THE UNCOVENANTED SERVICE BANK [I. L. R., 4 Calc., 829 : 3 C. L. R., 597

1. ———— art. 11—*Agreement to remunerate pleader for his services.*—Where a pleader is to receive a remuneration under a special agreement contained in his vakalatnama, or in a separate document, the document containing the agreement must bear a stamp of adequate value. NUTHOO LALL *v.* BUDREE PERSHAD . . 3 Agra, 286

2. ———— and s. 14—*Agreement—Bond.*—When an instrument consisted of two parts, the first containing a promise to repay with interest a sum of R12-8-0 and the second a further promise to give a quantity of grain,—*Held* that, as an agreement, the instrument required a stamp of 8 annas under s. 14 of Act XVIII of 1869 and sch. II, art. 11; but that, as a simple money bond, it was properly stamped with a stamp of 2 annas, and that, if the promisee abandoned his claim for grain, he could recover upon it the principal sum advanced with interest. CHIMNAJI *v.* RANU . I. L. R., 4 Bom., 19

3. ———— *Bond—Agreement with covenant sounding in damages.*—An instrument containing a covenant to do a particular act, the breach of which is to be compensated in damages, is not a bond, and requires an 8-anna stamp only. Remedies on such an instrument and on a bond discussed. GISBORNE & CO. *v.* SUBAL BOWRI [I. L. R., 8 Calc., 284 : 10 C. L. R., 219

4. ———— and sch. I, art. 5—*Bonds for performance of contracts of public works.*—A contract taken by the Department of Public Works for the execution of works falls within art. 11, sch. II, Act XVIII of 1869, and must bear a stamp of 8 annas. Where a contractor's sureties give bonds for the performance by him of his agreement, the bonds are chargeable with duty under art. 5, sch. I. ANONYMOUS . 13 W. R., 353

5. ———— *Agreement.*—A postscript to a document contained a stipulation that the defendant should return two promissory notes deposited with him when a certain house was given back to him in good order. *Held* that the document required a stamp of 8 annas under Act XVIII of 1869, sch. II, art. 11. MOTILAL *v.* MUNSHOOK KURAMCHAND . . I. L. R., 4 Bom., 328

6. ———— *Receipt for money and stipulating payment of interest.*—An instrument which acknowledged receipt of a sum of money and provided for the payment of interest at a specified rate per mensem was held to be an agreement falling within Act XVIII of 1869, sch. II, art. 11. FERRIER *v.* RAM KALPA GHOSE . 23 W. R., 403

———— art. 13—*Power-of-attorney under Registration Act, 1871, s. 33.*—For a power-of-attorney executed under the provisions of s. 33 (*a*) of the Registration Act of 1871 Act (VIII of 1871), a stamp of 8 annas is sufficient under art. 13, sch. II of the General Stamp Act (XVIII of 1869). IN RE KESHAV KASINATH . 9 Bom., 43

STAMP ACT (XVIII OF 1869)—*concluded*

———— art 15—*Schedule appended to deed of sale—Collateral instrument*—A schedule appended to a deed of sale does not require to be stamped under the provisions of Act XVIII of 1869 ANONYMOUS . 6 Mad, Ap, 36

1 ———— art 32—*Power of attorney*—An instrument authorizing a person to receive on behalf of another such sums as should become due in the course of the execution of a certain work is not an assignment of money, but a power of attorney, and is covered by a stamp of R8 whatever may be the amount recoverable under it BHAGVANDAS KISHORDAS *v* ABDUL HUSEIN MAHOMED ALI
[I L R, 3 Bom, 49

2. ———— *Vakalatnama*—A vakalatnama authorizing a pleader to receive during the course of a suit which he has been empowered to conduct, money or documents receivable by his client in the ordinary course of such suit or in consequence of the order or decree of the Court in such suit, does not require a stamp under Act XVIII of 1869 ANONYMOUS I L R, 3 Calc, 767

S C. IN THE MATTER OF ACT XVIII OF 1869
[3 C L R, 13

———— art 38—*Instrument of transfer*—The accused was prosecuted under Act XVIII of 1869, s 29, for executing a document on

of the said land the said vendors have given me 4

dors and me, the purchaser, hence I have executed this chitti by way of conveyance or deed of exchange which may be of service when required" This document bore a stamp of 8 annas, and it was executed only by the accused and presented by him for registration *Held* that the document was an instrument of transfer within the meaning of art 83 sch II, Act XVIII of 1869 EMPRESS *v* DWARKANATH CHOWDHRY. I L R, 2 Calc, 399

STAMP ACT (I OF 1879)

———— s 2, cl. 13—*Specified property*—An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement *Held* that the fund intended to be created under the agreement was not "specified property" within the meaning of s 2, cl 13 of the Stamp Act REFERENCE UNDER STAMP ACT s 46 I. L. R., 11 Mad, 216

———— s. 3

See PROMISSORY NOTES, FORM OF,
[I. L. R, 16 Mad., 383

STAMP ACT (I OF 1879)—*continued*

1. ———— *Hundi stamped with adhesive stamps—Admissibility in evidence—"Duly stamped"*—The words "duly stamped" in s 3 of the Stamp Act signify "stamped or written upon paper bearing an impressed stamp" GISBORNE & Co *v* SUBAL BOWRI
[I L R, 8 Calc, 284. 10 C L R, 219

2. ———— sub s (4)—*Bond—Promissory note*—Where an instrument bearing date the 24th September 1881, stamped with an adhesive stamp of 1 anna, and attested, recited that an account was made up of the principal and interest due on a former bond executed by the defendant to the plaintiff, and that a certain sum was found due at the date of the instrument the defendant promising to pay interest at a certain rate on the sum thus found due and pay the principal on demand,—*Held* that the instrument was a bond within the definition given in Act I of 1879 and should be stamped accordingly BALKRISHNA TRIMBAK *v* GOVIND PAND NAIK . I L. R, 8 Bom, 297

3 ———— *Agreement—Bond—*

gram Where the value of such an instrument was ascertained to be less than R10, it was held to be properly stamped as a bond with a stamp of 2 annas MAGANDAS KHEMCHAND *v* RAMCHANDRA HIRAJI
[I L R, 7 Bom, 137

4 ———— *Bond*—*A* executed a document by which he promised to pay on demand R16 to *B* The writer of the document signed the document as writer, for the purpose of attesting *A*'s signature *Held* that the document was liable to stamp duty as a bond REFERENCE UNDER STAMP ACT, s 46 I L R, 10 Mad, 158

5 ———— *Bond—Contract for personal service*—The defendant signed an agreement in England with a Railway Company whereby he contracted to serve the Company exclusively for

stamped as a bond MADRAS RAILWAY Co *v* RUST
[I L R, 14 Mad, 18

6 ———— *Bond*—*R* executed a document, by which he promised to pay on demand R10 12 0 with interest to *S R* The writer of the document and some others signed the document as witnesses *Held* that the document was a bond and liable to stamp duty as such REFERENCE UNDER STAMP ACT, s 49 I. L. R, 13 Mad, 147

STAMP ACT (I OF 1879)—*continued.*

7. ——————— *Khata in the name of the debtor, but in the handwriting of another—Bond—Acknowledgment.*—A khata in the name of a debtor acknowledging the receipt of the amount advanced, and bearing the signature of the writer of the khata as writer of it merely, *held* to be an acknowledgment only, and not a bond, within the meaning of s. 3, sub-s. 4 (*b*), of the Stamp Act (I of 1879). DULABH VANMALI *v.* REHMAN JAMAL

[I. L. R., 14 Bom., 511

8. ——————— and s. 61—*Acknowledgment of debt in writing—Attestation by witnesses—Bond.*—Documents which are in form acknowledgments only are not converted into bonds, as defined in s. 3, sub-s. 4 (*b*), of the Stamp Act (I of 1879), merely because they contain memoranda as to the rate of interest at which the loan is made and are attested by witnesses. *No document can be a bond within the above section, unless it is one which by itself creates an obligation to pay the money.* HIRA LAL SIRCAR *v.* QUEEN-EMPRESS

[I. L. R., 22 Calc., 757

9. ——————— *Bond—Promissory note—Attestation by witness.*—A document by which the executant promised to pay to the person named therein a certain sum of money on a certain date with interest is not "attested by a witness" within the meaning of cl. (*b*) of sub-s. 4 of s. 3 of Act I of 1879, *merely by reason of its bearing on the face of it* a statement by the scribe of the document, that the document was correct and was written by his pen. REFERENCE UNDER STAMP ACT, s. 49

[I. L. R., 17 All., 211

10. ——————— and sch. I, art. 5—*Court Fees Act, sch. II, art. 1 (b)—Petition to withdraw suit—Agreement—Bond.*—A petition, stamped as an agreement, having been presented to a District Court by the parties to a suit, informing the Court that they had entered into an agreement, whereby, *inter alia*, the defendant was bound to deliver to the plaintiff certain wood, and requesting that the suit might be removed from the file, the District Judge impounded it, levied a sum for insufficient stamp duty and a penalty, on the ground that it was a bond, and forwarded it to the Collector. Upon a reference made by the Board of Revenue at the instance of the Collector,—*Held* that the instrument was not a bond, but a petition to the Court, requiring a Court-fee stamp. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 15

11. ——————— and sch. I, art. 11—*Promissory note—Bond—Impressed label—Impressed sheet—Rule 9 (a) of the Rules of Government of India of 26th February 1881.*—By a document dated 8th March 1882, which purported to be a promissory note attested by three witnesses and written on an impressed label of 2 annas, *A* promised to pay *B* before a certain date R135. *Held* that the document was a bond and must be treated as unstamped for the purposes of s. 34 of the Stamp Act, 1879. By a document, dated 23rd June 1880, stamped with an adhesive stamp of 1 anna, purporting to be a promissory note attested by two witnesses, *A* promised to pay R56 *to B or order*, on demand. *Held* that the document was not a bond, but a promissory note. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 8 Mad., 87

12. ——————— and sub-s. (13)—*Bond—Mortgage—Stamp Act, 1879, ss. 7, 26, and sch. I, arts. 13, 44.*—A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest money" and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar) upon which he was to receive a profit of 9 annas per maund over and above *a price to be thereafter fixed at a meeting of growers.* He further covenanted as follows: "If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due, including the profits, shall be paid at the rate of R1 per maund; that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once, including the said profits." As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held* by the Full Bench that the instrument was a "mortgage-deed" within the meaning of s. 3, sub-s. (13), and art. 44 (*b*) of sch. I of the Stamp Act (I of 1879). *Held* by STUART, *C.J.*, STRAIGHT, *J.*, and BRODHURST, *J.*, that it was also a "bond" within the meaning of s. 3, sub-s. 4 (*c*) and art. 13 of sch. I and with reference to the provisions of s. 7 was chargeable with stamp duty solely as a bond under art. 13, the contract being a single one. *Held* by the Full Bench that the proper stamp duty payable on the instrument was four annas. *Held* by STUART, *C.J.*, and STRAIGHT, *J.*, that in estimating the stamp-duty payable on the instrument, the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab must be taken into account. *Reference by Board of Revenue, N.-W.P., I. L. R., 2 All., 654*, doubted, and *Gisborne* v. *Subal Bowri, I. L. R., 8 Calc., 284* referred to by STRAIGHT, *J.* *Per* STUART, *C.J.*, that for the purpose of estimating the stamp duty, the amount secured by the instrument was R25, the amount borrowed, plus R11-8, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit, *i.e.*, the price fixed at the meeting of growers, not having been ascertainable at the time of execution, fell within the provisions of s. 26 of the Stamp Act, and could not have the effect of adding to the stamp duty. *Per* OLDFIELD, *J.*, that the amount secured or limited, to be ultimately recoverable under the instrument, was R25, the amount borrowed, plus R21, the sum recoverable at R1 per maund, in the event of the borrower's non-delivery of the 21 maunds; and stamp-duty was payable on this amount. IN THE MATTER OF GAJRAJ SINGH

[I. L. R., 9 All., 585

13. ——————— and s. 23—*Bond—Interest.*—A bond for a loan of R100 stipulated that the obligor should "pay twice the amount, including R100 for interest, total R200, in eight years from 1301 to 1308, according to kists given in the schedule" *Held* that the amount secured by the

STAMP ACT (I OF 1879)—*continued.*

bond was R200, and the bond must be stamped accordingly S 23 of the Stamp Act (I of 1879) did not apply to the instrument SAMBHU CHANDRA BEPARI v KRISHNA CHARAN BEPARI

[I. L. R, 26 Calc., 179

14 ——————— and sch I, art. 13—*Bond—Attestation* —A company agreed to pay £220 000 in five instalments for the cost of constructing a railway, on the terms, among others, that debentures on the railway should be handed over to the company on each payment being made, and that, in the event of the other party failing to perform his liabilities as to the construction of the railway, the company should be entitled to sell the debentures, and also to recover damages, and also to discontinue payments of the above instalments It was also provided that the company should be at liberty to retain £40,000 as compensation for risk, expenses etc. The agreement was sealed with the seal of the company in the presence of two Directors and the Secretary *Held* that the instrument was liable to stamp duty as a bond for £220,000 under Act I of 1879 REFERENCE UNDER STAMP ACT, s 46

[I L R, 15 Mad., 193

——— s 3, sub-s (6)—*Order for payment of money on a person not a banker* —The plaintiff agreed to lend money to the defendant for payment of his trade debts, etc In pursuance of the agreement the defendant gave his creditors "chits" for certain sums These 'chits' were addressed to the plaintiff, and requested him to pay the amounts mentioned therein He did so, and then sued for the amount advanced It was contended by the defendant that the "chits," being cheques or bills of exchange, were inadmissible in the evidence, because unstamped The Court found that by the agreement the plaintiff was not constituted the defendant's banker within the meaning of sub s 6, s 3 of the Stamp Act, 1879 *Held* that the "chits" did not require a stamp. RATULAL RANGILDAS v VRIJBHUKHAN LARABHURAM

[I. L R, 17 Bom, 684

1. ——— s. 3, sub s (9)—*Conveyance—Transfer by trustee to cestui que trust—Release* —Where three executors of a will purported to convey by deed to one of them, in consideration of a sum of R10, a house to which the latter was entitled under the will,—*Held* that the deed, having been drawn in the form of a conveyance, was liable to stamp duty as such REFERENCE UNDER STAMP ACT, 1879

[I. L R, 7 Mad, 350

2 ——————— and sub ss (11) and (19)—*Deed of family arrangement* —By a deed of family arrangement, one brother conveyed a pergunnah and the sum of two-and a-half lakhs of rupees to a younger brother, on condition that the latter should release certain family property on which he had claims *Held* that the deed was neither a conveyance or a settlement, nor an instrument of partition, within the meaning of Act I of 1879 IN THE MATTER OF THE MAHARAJAH OF DURBHUNGAH

[I. L. R., 7 Calc, 21

STAMP ACT (I OF 1879)—*continued.*

3 ——————— *Conveyance—Transfer of land in pursuance of compromise* —A transfer of land, in pursuance of a compromise of a widow's suit for maintenance, is a conveyance, and must be stamped accordingly REFERENCE UNDER STAMP ACT, s 46

I. L R., 21 Mad., 422

1 ——— s 3, sub-s (10)—*Unduly stamped—Rule 5 (e) of the Government of India, 3rd March 1882 (attestations of plain sheets subjoined to stamped documents), ultra vires* —Of the rules, dated 3rd March 1882, issued by the Governor General in Council, under ss 9, 15, 17, 32, 51, and 56 of the Stamp Act 1879, rule 5 (*e*) requires that the part of an instrument which is written on plain sheets of paper attached to the stamped paper must be attested by the parties executing, and by the witnesses to the document *Held* by KERNAN, MUTTUSAMI AYYAR, and BRANDT, JJ (TURNER, C J, dissenting), that the rule is *ultra vires* and inoperative for the purpose of declaring an instrument, written contrary to the provisions thereof, unduly stamped within the meaning of s 3 (10) of the Act *Per* TURNER C J — An instrument not written in accordance with the directions in rule 5 (*e*) is not duly stamped REFERENCE UNDER STAMP ACT, 1879

I L. R, 8 Mad, 532

2 *Duly stamped—Document issued without endorsement required by rules passed and published under ss 55 and 57.*—The omission of a stamp vendor to endorse on a stamped paper the particulars required by rule (9) of the revised rules published under ss 55 and 57 of the Indian Stamp Act, 1879, by the Government of Madras, with the approval of the Governor General in Council does not render a document "not duly stamped" within the meaning of s 3 (10) of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, s 46 .

I. L R, 11 Mad, 377

3 ——— ——— *Instrument professing to effect a partition ultra vires of the executants—Instrument of partition* —Persons incorrectly purporting to be co-owners of certain property agreed to divide it in severalty by written documents *Held* that the arrangement fell within the definition of "instrument of partition" in the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879

[I. L R, 12 Mad, 198

4. ——— ——— *Instruments "duly stamped"—Rule 5 (b) of the rules made by the Governor-General in Council under Notification No 1288 of 3rd March 1882* —The absence of the certificate required by rule 5 (*b*) of the rules, dated 3rd March 1882 issued by the Governor General in Council, under ss 9 15, 17, 32, 51, and 56 of the Stamp Act (I of 1879), does not make the document in question not "duly stamped" within the intention of the Stamp Act QUEEN EMPRESS v TRAILAKYA NATH BARAL I L. R., 18 Calc., 39

5. ——— ——— *Promissory note not chargeable with duty of 6, 10, or 12 annas—Such promissory note written on impressed sheet of proper value bearing the word "hundi"—Note duly stamped—Rules by Governor-General in*

STAMP ACT (I OF 1879)—*continued.*

Council under s. 9 of Stamp Act—Notification No. 1288 of 3rd March 1882, rules 3, 4, 6—Notification No. 2955 of 1st December 1882, rule 6A.—The effect of Notification No. 2955 of the 1st December 1882, amending the rules made by the Governor-General in Council under s. 9 of the Stamp Act (I of 1879) and published in Notification No. 1288 of the 3rd March 1882, is not to prohibit all promissory notes except those chargeable with a duty of 6, 10, or 12 annas being written on impressed sheets bearing the word "hundi." A rule which says that certain promissory notes shall be written on impressed sheets bearing the word "hundi" cannot be interpreted as enacting that other promissory notes shall not be written on impressed paper of the proper value if it happens to bear the word "hundi." A promissory note for an amount not exceeding R200, payable otherwise than on demand, but not more than one year after date, and requiring a stamp of two annas, is duly stamped if written on an impressed sheet of the value of two annas, though that impressed sheet bears the word "hundi." RADHA BAI *v.* NATHU RAM . . I. L. R., 18 All., 66

6. ——————— and s. 34—*Rules 4 and 6 of rules made under s. 9 of the Stamp Act—Promissory note—Hundi stamp.*—In a suit on a promissory note for R4,300, which was executed on an impressed sheet bearing an impressed stamp with the word "hundi" at the top and the words "three rupees" at the bottom of the impression.—*Held* that, with reference to rules 4 and 6 of the rules made under s. 9 of the Stamp Act and dated 3rd March 1882 and the 1st December 1882, the instrument was "duly stamped" as to the amount of duty, and was admissible in evidence. BANK OF MADRAS *v.* SUBBARAYALU

[I. L. R., 14 Mad., 82

1. ——— s. 3, sub-s. (11)—*Partition deed—List of divided property—Agreement to divide outstandings.*—In a document signed by the members of a Hindu family and attested by witnesses, which purported to be an account or list of the share of one member of the family in the family property, it was recited that the parents of the family were to enjoy certain lands, and that the outstanding debts should be divided at a future date. *Held* that this document was not liable to stamp duty as a partition deed. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 385

2. ——————— *Award of arbitrators for division of family property—Written agreement to effect division according to the terms of the award. Effect of—Division of the property in severalty—Partition deed.*—The co-sharers in an undivided Hindu family having under a written instrument agreed to divide the family property according to the terms of the award passed by the arbitrators.—*Held* that the instrument was an agreement to divide the property in severalty, and was therefore a partition deed within the definition in sub-s. (11) of s. 3 of the General Stamp Act (I of 1879). IN RE VASANJI HARIBHAI

[I. L. R., 15 Bom., 677

STAMP ACT (I OF 1879)—*continued.*

3. ——————— and s. 29, and sch. I, art. 37—*Instrument of partition—Computation of value of property.*—*Held* that the words "the final order" used in the definition of an "instrument of partition" in Act I of 1879 mean not the order authorizing a partition to proceed, but the order passed after the partition has been made declaring the various allotments of land. Also that the stamp-duty chargeable under that Act on an instrument of partition is chargeable in respect of the entire property sought to be divided, and not merely in respect of that portion of it allotted to the applicant for partition. Also that, for the purposes of that Act, the value of the property is to be computed with reference to its market value, and not with reference to the Court Fees Act, 1870. REFERENCE BY BOARD OF REVENUE . . . I. L. R., 2 All., 664

4. ——————— and s. 29 (e)—*Instrument of partition.*—Three out of seven brothers, constituting an undivided Hindu family, executed documents whereby each acknowledged the receipt of certain property made over to him, "a division of family property having been effected," and acknowledged himself liable for one-seventh of the debts of the family. One of the documents contained a clause to the effect that the executant had no further claim on property of the family.—*Held* that the documents should be stamped as instruments of partition, each member paying according to the share taken by him under the partition. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 164

1. ——— s. 3, sub-s. (16)—*Definition of "mortgage"—Transfer of Property Act (IV of 1882).*—For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act, not as defined in the Transfer of Property Act. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER

[I. L. R., 27 Calc., 587
4 C. W. N., 524

2. ——————— *Mortgage—Indemnity bond.*—An agreement entered into by the Secretary of State and a salt contractor recited that the contractor had deposited certain promissory notes to secure the due fulfilment of the contract, and provided that the promissory notes should be returned on the due fulfilment of the contract. *Held* that the agreement was a mortgage as defined by the Stamp Act. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 11 Mad., 39

3. ——————— *Lease—Mortgage.*—An instrument, therein described as a lease, was executed in consideration of one hundred and twenty rupees, and it provided that the party paying that sum should remain in possession of certain land for twelve years, but contained no provision for repayment of that sum or for the payment of rent. *Held* that the instrument was a usufructuary mortgage, and not a lease. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 21 Mad., 358

STAMP ACT (I OF 1879)—*continued*

1. ———— s 3, sub-s. (15)—*Policy of insurance or memorandum of proposed insurance—Document on the face of it not contemplating necessity of any other formal document*—A document not being a mere "slip" or memorandum of a proposed insurance, and mentioning the sum for which the assurer declares the name of the ship, the voyage and the premium, and providing for the losses being paid on its production, in conformity with certain conditions in the possession of the assurers, and lastly, expressly guaranteeing payment of losses and claims settled under it, and which, on the face of it, does not contemplate the necessity of any other document of a more formal character being passed to the assured, requires to be stamped as a policy under sub s (15), s 3 of the Stamp Act (I of 1879) IN RE MARINE INSURANCE CERTIFICATE I. L R, 19 Bom, 130

2 — and s 25—*Policy of insurance—Uncovenanted Service Family Pension Fund, Stamp on entrance certificate of*—An entrance certificate granted under the rules of the Uncovenanted Service Family Pension Fund is a life policy within s 3 (5) of the Stamp Act for an amount not exceeding R1 000 and is therefore chargeable with a duty of 6 annas Such an instrument is not within the scope of s 25 (c) of the Stamp Act REFERENCE UNDER STAMP ACT, 1879 s 46

[I. L R, 19 Calc, 499

—— —— s 3, sub s (17)—*Receipt—Memorandum of payment—Document containing no*

that money was received IN RE JAMNADAS HARINARAN I. L R, 23 Bom, 54

1 —— s 3, sub s. 19 (b)—*Settlement—Gift*—The word "settlement," as defined in s 3 of the Stamp Act suggests the creation of a separate interest in favour of several persons who may have a legal or moral claim on the settlor or for whom he may desire to make a provision *Held* therefore that where because of natural affection, a person

2. ——— *Settlement—Gift*—An instrument whereby a life interest in land is created with remainder to the settlor and his heirs is a settlement within the meaning of the Stamp Act REFERENCE UNDER STAMP ACT, s 46

[I L R, 21 Mad, 422

STAMP ACT (I OF 1879)—*continued.*

———— s 5

See POWER OF-ATTORNEY

[I. L R, 23 Calc, 187

———— s 6—*Endorsement of consent of relative and co sharer on deed of conveyance—Document completing transaction*—The document marked A was a document on a three rupee stamp paper executed by *H* to on *V* purporting to convey to him certain immoveable property absolutely for the consideration of R275 On the same deed of sale *R*, the undivided nephew of the executant, endorsed his consent to the sale *Held* that the endorsement of consent and the conveyance were several instruments employed to complete a transaction within the contemplation of s 6 of the Stamp Act (I of 1879), and the consent ought to have been written on a separate stamp paper of the value of one rupee. IN THE MATTER OF HANMAPA I L R, 13 Bom, 281

1 ————s. 7, and s 3, sub s (4), sch. I. art 5—*Bond—Agreement with penalty in case of breach*—One of the clauses of an instrument by which one party to the instrument bound himself in the event of a breach on his part of any of the conditions of the instrument to pay the other party thereto a penalty of R5,000, being regarded as a "bond," within the meaning of Act I of 1879 such instrument, if that clause were not so regarded, being an agreement chargeable under that Act with a stamp duty of 8 annas—*Held* (STUART C J, dissenting) that the instrument was chargeable under s 7 of that Act, with the stamp duty leviable on a bond for R5 000 *Per* STUART, C J.—That,

only chargeable with a stamp duty of 8 annas REFERENCE BY BOARD OF REVENUE

[I L R., 2 All, 654

2 *Contracts for several loans of rice on a single bond*—*Construction*—Sixteen persons borrowed a quantity of rice from the plaintiff, and executed to him a bond for the debt,

instrument should be regarded as comprising sixteen

3 ———— para 2—*Stamp duty—Lease—Pottah—Mortgage*—By an instrument

from the rent of each year, a portion should be deducted in payment of *A's* debt to *B*, so that in this way the whole debt should be paid by a series of instalments extending over the term of the lease. The instrument also contained the usual clauses found

STAMP ACT (I OF 1879)—*continued.*

in pottahs. On the question what was the proper amount of stamp duty leviable on the document,—*Held* that, though the arrangement intended to be effected was partly a lease and partly an usufructuary mortgage, yet the instrument came within the provisions of s. 7, para. 2, of the Stamp Act, and should be stamped as a mortgage only. IN THE MATTER OF A REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE GENERAL STAMP ACT. EX-PARTE HILL

[I. L. R., 8 Calc., 254: 10 C. L. R., 33

4. ———————— *Lease and mortgage combined in one document—Stamp Act (I of 1879), s. 3, sub-s. (13).*—A zamindar leased certain land in his village to some cultivators at a rent of R365 per annum in cash and of certain cart-loads of straw and grass, by a document which also contained an agreement by the lessees hypothecating certain other property belonging to them for the purpose of securing the payment of the agreed rent, and for the performance of the engagement for the delivery of the other articles. *Held* that the document above referred to should be stamped as a mortgage-deed according to the definition contained in s. 3, sub-s. (13) of Act I of 1879, and also that it fell within the second paragraph of s. 7 of the above Act. *Ex-parte Hill, I. L. R., 8 Calc., 294,* referred to. REFERENCE UNDER STAMP ACT, s. 49 . . . . . I. L. R., 17 All., 55

5. ———————— and art. 54—*Release—Debts—Annuity.*—*J* and *S* passed to their brother *E* an instrument which set forth (1) that *J* and *S* relinquished their right to certain property in favour of *E*; (2) that *E* was to discharge certain debts; and (3) that *E* was to pay to *J* and *S* an annuity. *Held* that the provisions in favour of *J* and *S* were a mere recital of the consideration moving from *E*; that no interest was created in favour of *J* and *S*; and that therefore the instrument should be stamped as a release only. EKNATH S. GOWNDE *v.* JAGGANNATH S. GOWNDE . . I. L. R., 9 All., 417

———————— s. 10—*Hundi.*—A hundi for a sum of R380, payable otherwise than on demand, cannot be stamped with an adhesive stamp. The words "drawn or made out of British India" in cl. (*b*) of s. 10 of the Stamp Act of 1879 apply to the entire clause. DEVAJI *v.* RAMAKRISTNIAH

[I. L. R., 2 Mad., 173

———————— s. 11 and ss. 61, 62—*Instrument requiring to be stamped before or at time of execution—Non-cancellation of adhesive stamp—Sanction to prosecution.*—The first paragraph of s. 11 of the General Stamp Act (I of 1879) applies to cases in which the instruments chargeable with duty may be stamped after execution. A bill for the monthly salary of a Government official was sent to the treasury for payment, when it was discovered that the one-anna receipt stamp affixed thereto was not cancelled, and a prosecution was thereupon instituted by the Collector against the official in question, who had executed the instrument, under s. 62 of the General Stamp Act. The accused was convicted under that section by the Deputy Magistrate, and the District Magistrate on appeal, holding that, upon the evidence, the conviction should have been for abetment and not for the principal offence, altered the finding accordingly to a conviction under s. 109 of the Penal Code, read with ss. 11 and 62 of the General Stamp Act. *Held* that the receipt to the salary bill in question was an instrument which was required to be stamped before or at the time of execution, and was not of the kind contemplated by the first paragraph of s. 11 of the General Stamp Act; that consequently there was no abetment of any offence under ss. 11 and 62 of the Act; that the offence which appeared to have been committed was one under the second paragraph of s. 61; but that, no sanction having been given by the Collector under s. 69 for a prosecution under s. 61, it was not advisable to interfere further than by setting aside the conviction and sentence. QUEEN-EMPRESS *v.* RAHAT ALI KHAN . I. L. R., 9 All., 210

———————— s. 12 and s. 7—*Contract by principal and surety on same stamp paper, but separately written—Writing on the reverse of a stamp paper—Government notifications under the Stamp Act, Force of.*—In a bond engrossed on a stamp paper of sufficient value, and dated the 19th April 1879, the contract of the principal was written first, and after his signature followed the contract of the surety, signed by the latter. The document commenced on the side other than that on which the stamp was impressed, and terminated on the side impressed with the stamp. The stamp was not in any way defaced, nor was the paper so written as to admit of the stamp being used again. *Held* that the bond constituted only one instrument, and was properly stamped, not being open to objection under ss. 7, 12, 13, and 14 of the Stamp Act, 1879. The construction of the words "on the face of the instrument," used in s. 12 of Act I of 1879, considered. *Quære*—Whether certain Government notifications—to the effect that an instrument, commenced on the side of the paper other than that on which the stamp is impressed and completed on the side on which the stamp is impressed, is, under s. 12 of Act I of 1879, to be treated as unstamped, and prohibiting writing on the reverse of an impressed stamped paper—are *ultra vires* as being more stringent than, and therefore inconsistent with, that Act? DOWLATRAM HARJI *v.* VITHO RADHOJI

[I. L. R., 5 Bom., 188

1. ———————— s. 13—*Suit on bond—Stamp, Sufficiency of.*—A bond stipulated that for the consideration of a loan of R80 the debtor should deliver to the creditor on a future day "800 arris of grain valued at R10 per 100 arris." The bond was engrossed on an 8-anna stamp paper. In a suit on the bond for the recovery of 800 arris at 4 arris per rupee or its price, R200,—*Held* that the bond was adequately stamped. BHAIRAB CHUNDRA CHOWDHRI *v.* ALEK JAN . . I. L. R., 13 Calc., 268

2. ———————— and s. 34—*Mony-bond—Endorsement of transfer.*—The endorsement of transfer written on a simple money-bond duly stamped requires a stamp, and can be stamped under s. 34 of the Stamp Act. PRALHAD LAKSHMANRAV *v.* VITHU . . . I. L. R., 17 Bom., 687

STAMP ACT (I OF 1879)—*continued*

——— s. 16 and ss 11 and 34—*Hundi*— ... *tion and hundi*— ... hundi was ... him with a one anna stamp which was left uncancelled and the hundi was subsequently taken by him to the plaintiff's son who received it from him and at the time of receiving it cancelled the stamp by writing the date across it,—*Held* that the hundi was duly stamped under ss 10 and 16 of the Stamp Act (I of 1879) and was admissible in evidence If at the time of delivery, which completed its legal character the hundi was stamped and if the cancellation took place at that time as part of the same transaction, it was sufficient A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or if having been at any time previously affixed, it is cancelled at the time of execution When applied to a document the term "execution" means the last act or series of acts which completes it It might be defined as formal completion The contract on a negotiable instrument until delivery is incomplete and revocable Until delivery, a hundi is not clothed with the essential characteristics of a negotiable instrument BHAWANJI HARBHUM *v* DEVJI PUNJA

[I L R, 19 Bom, 635

1 — — s 24—*Conveyance—Consideration—Agreement to pay assessment until transfer is made in Collector's books—Relinquishment of title* ...

... agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee purchaser in the Collector's books —*Held* that such an instrument was a conveyance of which the amount of the consideration calculated according to s 24 of the General Stamp Act (I of 1879) was the original mortgage amount plus the amount mentioned in the instrument *Held* also that the instrument was an agreement to pay assessment until the land conveyed was transferred in the Collector's books and as such should bear the additional stamp for an agreement namely, eight annas SIVAPAYA *v* SHIVAIA

[I L R, 15 Bom, 675

2 ——— and sch I, art 16—*Certificate of sale*—The stamp duty payable on a certificate of sale is governed not by s 21, but by art 16, sch. I of the Stamp Act, 1879 *Semble*—That when property is merely sold subject to a ...

3 ———*Stamp on sale certificate—Property sold subject to a mortgage—Interest—Transfer of Property Act (IV of 1882), sub s 5 (d), s 55*—Where property is sold subject to a mortgage or other charge, the payment of such mortgage or charge forms, under ordinary circumstances, no part of the consideration-money for the purchase. The stamp duty payable on a document conveying such a property is an *ad valorem* duty on the amount of the money paid as consideration for the sale IN THE MATTER OF ACT I OF 1879 IN THE MATTER OF A REFERENCE TO THE BOARD OF REVENUE I. L R, 10 Calc, 92: 13 C L R, 164

4 ——— *Certificate of sale—Purchase money*—Claims on property admitted by the parties or established by a decree of a Court should be entered in the certificate of sale and be computed as part of the purchase-money in ascertaining the amount of the stamp duty leviable on the certificate of sale Other claims should neither be entered in the certificate of sale nor computed as part of the purchase money It is the duty of the purchaser to provide the stamp. IN RE RAMKRISHNA

[I L R, 8 Bom, 47

5 ——— and sch I, arts 16 and 21—*Certificate of sale of property sold by public auction under order of Court—Sale subject to mortgage or lien—Mortgage debt—Interest—Consideration*—Where a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court, has expressly set out that such sale is made subject to the mortgage right of a third party, the principal sum (but not the interest) due at the time of the sale on such mortgage is to be deemed "part of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty" under s 24 of the Stamp Act so that the whole consideration in respect of which such sale is under arts 16 and 21 of sch I of that Act, liable to stamp duty is the sum of the purchase-money and the principal money so due on the mortgage The certificate of sale therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage *Semble*—It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing incumbrance on the property sold, in the certificate of sale Arrears of interest due on the mortgage are to be excluded from ...

... duty ... that with which it would have been chargeable had no mention of interest been made therein"—applies as much in this case as if the document of transfer, on which the stamp duty was to be calculated, had been the document itself which stipulated for the payment of interest NAGINDAS JEYCHAND *v* HALALKHORE NATHWA GHEESLA

[I. L R, 5 Bom., 470

6 ——— *Mortgage lien—Certificate of sale—Sale in execution of decree*—Where property is sold at a Court sale subject to a mortgage lien, the stamp upon the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved *Nagindas Jeychand v Halalkhore Nathwa Gheesla, I L. R, 5 Bom., 470,* followed. KAISUR KHAN MURAD KHAN *v* EBRAHIM KHAN MUSA KHAN

[I L R, 15 Bom, 532

STAMP ACT (I OF 1879)—*continued.*

in pottahs. On the question what was the proper amount of stamp duty leviable on the document,—*Held* that, though the arrangement intended to be effected was partly a lease and partly an usufructuary mortgage, yet the instrument came within the provisions of s. 7, para. 2, of the Stamp Act, and should be stamped as a mortgage only. IN THE MATTER OF A REFERENCE FROM THE BOARD OF REVENUE UNDER S. 46 OF THE GENERAL STAMP ACT. EX-PARTE HILL

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STAMP ACT (I OF 1879)—*continued.*

Magistrate on appeal, holding that, upon the evidence, the conviction should have been for abetment and not for the principal offence, altered the finding accordingly to a conviction under s. 109 of the Penal Code, read with ss. 11 and 62 of the General Stamp Act. *Held* that the receipt to the salary bill in question was an instrument which was required to be stamped before or at the time of execution, and was not of the kind contemplated by the first paragraph of s. 11 of the General Stamp Act; that consequently there was no abetment of any offence under ss. 11 and 62 of the Act; that the offence which appeared to have been committed was one under the second paragraph of s. 61; but that, no sanction having been given by the Collector under s. 69 for a prosecution under s. 61, it was not advisable to interfere further than by setting aside the conviction and sentence. QUEEN-EMPRESS *v.* RAHAT ALI KHAN . I. L. R., 9 All., 210

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[I. L. R., 5 Bom., 188

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STAMP ACT (I OF 1879)—*continued*

———— s 16 and ss 11 and 34—*Hundi—Execution—Stamp affixed at time of execution and subsequently cancelled on delivery of hundi—Evidence Admissibility of*—Where a hundi was written by the defendant and stamped by him with

that time as part of the same transaction it was sufficient A deed is duly stamped if the stamp is affixed and cancelled at the time of execution, or

negotiable instrument until delivery is incomplete and revocable Until delivery, a hundi is not clothed with the essential characteristics of a negotiable instrument BHAWANJI HARBHUM v DEVJI PUNJA [I L R, 19 Bom, 635

1 ——s 24—*Conveyance—Consideration—Agreement to pay assessment until transfer is*

and also agreed to pay the Government assessment until the transfer of the land to the name of the mortgagee purchaser in the Collector's books —*Held* that such an instrument was a conveyance of which the amount of the consideration calculated according to s 24 of the General Stamp Act (I of 1879) was the original mortgage amount plus the amount mentioned in the instrument *Held* also that the instrument was an agreement to pay assessment until the land

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STAMP ACT (I OF 1879)—*continued*

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5 ———— and sch I, arts 16 and 21—*Certificate of sale of property sold by public auction under order of Court—Sale subject to mortgage or lien—Mortgage debt—Interest—Consideration*—Where a certificate of sale, granted to the purchaser of property sold by public auction under an order of Court, has expressly set out that such sale is made subject to the mortgage right of a third party, the principal sum (but not the interest) due at the time of the sale on such mortgage is to be deemed "part of the consideration in respect whereof the transfer is chargeable with *ad valorem* duty" under s 24 of the Stamp Act so that the whole consideration in respect of which such sale is, under arts 16 and 21 of sch I of that Act liable to stamp duty is the sum of the purchase money and the principal money so due on the mortgage The certificate of sale therefore, whenever it is possible, should set out the exact amount that is due, at the time of the sale, in respect of the principal sum secured by the mortgage *Semble*—It is otherwise if the mortgage be only recited in the proclamation of sale, and not expressly set out, as an existing incumbrance on the property sold, in the certificate of sale Arrears of interest due on the mortgage are to be excluded from such calculation, since s 23 of the Stamp Act—which enacts that 'where interest is

to be calculated had been the document itself which stipulated for the payment of interest NAGINDAS JEYCHAND v HALALKHORE NATHWA GHEESLA [I L R, 5 Bom., 470

6 ———— *Mortgage lien—Certificate of sale—Sale in execution of decree*—Where property is sold at a Court sale subject to a mortgage lien, the stamp upon the certificate of sale should cover the amount for which the property was sold, as well as the amount of the mortgage lien reserved *Nagindas*

[I. L. R., 15 Bom., 032.

STAMP ACT (I OF 1879)—*continued.*

7. ———————— and sch. I, art. 63—*Sale of leasehold property—Rent reserved not liable to ad valorem duty—Stamp duty leviable only on the actual consideration-money—Stamp Act (II of 1899), ss. 24, 25, sch. I, art. 63.*—Certain leasehold property demised by the Secretary of State for India to the original lessee for a term of 999 years at the yearly rent of R39-11-0 was assigned to the trustees of a charity for the sum of R1,02,000, the trustees covenanting on their part to pay the rent reserved by the original lease. The deed bore a stamp of the value of R1,020, R1,02,000 having been assumed to be the consideration for the transfer. The Collector of Bombay referred to the High Court the question whether, under s. 24 of the Stamp Act (II of 1899), the payment of the rent reserved by the deed should not be taken as part of the "consideration" in respect whereof the transfer was chargeable with *ad valorem* duty. *Held* that the *ad valorem* duty was only payable on the consideration actually mentioned in the conveyance (*viz.*, the amount of the purchase-money. REFERENCE UNDER STAMP ACT, 1899 . **I. L. R., 24 Bom., 257**

———————— s. 26—*Lease—Amount of rent for first year unascertainable—Stamp Act, 1869, s. 19.*—When the amount of rent payable for the first year cannot be ascertained in order to determine the proper stamp under sch. I, s. 19 (*b*) of the General Stamp Act, 1869, for a lease, and more rent is recovered than the stamp affixed warrants, the right to recover the rent due for the subsequent years is not affected. In such a case sufficient effect is given to s. 26 of the Stamp Act, 1879, by limiting the amount recoverable for the first year to the amount which the stamp will cover. COLLECTOR OF TANJORE *v.* RAMASAMIER

[I. L. R., 3 Mad., 342

———————— s. 31.

See DEBTOR AND CREDITOR.

[I. L. R., 16 Mad., 85

———————— s. 34.

See PROMISSORY NOTES, FORM OF.

[I. L. R., 8 Calc., 645

1. ———————— *Unstamped "promissory note" executed when Stamp Act, 1869, was in force—Admissibility of, as a "bond" on payment of penalty.*—An instrument which comes within the definition of a promissory note in the General Stamp Act, 1869, and is not duly stamped according to that Act (which was in force at the date of its execution), cannot be admitted in evidence upon payment of penalty under s. 34 of the Stamp Act, 1879, on the ground that it falls within the definition of a bond in the latter Act. The levy of a penalty authorized under proviso (1) of s. 34 of the Stamp Act, 1879, implies a punishment for neglect in failing to affix the proper stamp at the time of execution. The word "chargeable" in the above proviso means chargeable under the Act in force at the date of the execution of the instrument. NARAYANAN CHETTI *v.* KARUPPATHAN . . . . **I. L. R., 3 Mad., 251**

2. ———————— *Unstamped transfer of mortgagee's interest, Effect of—Re-transfer of interest—Award, Effect of, on transfer—Unstamped*

STAMP ACT (I OF 1879)—*continued.*

instrument, Admissibility of, in evidence—Finding of fact based on conjecture—Fraud.—On the 17th September 1866 *G* gave *Z* an usufructuary mortgage of certain immoveable property to secure the repayment of R7,101, purporting to be advanced by *Z*. As a fact, only R2,301 of that amount were actually advanced by *Z*, the balance, R4,800, being advanced by *R*. In 1868 *Z* sold the mortgagee's interest in the deed of mortgage to *R* for R2,301, the transfer being by endorsement and not being stamped. In April 1869 *G* transferred a portion of the mortgaged property to *A*. In September 1869 *R* su[illegible] transfer set aside, claiming in virtue of the deed of mortgage and the transfer endorsed thereon. On the 23rd September 1871 the Court of first instance refused to receive the transfer by endorsement in evidence and to proceed with the suit, because such transfer was not stamped. On the 20th April 1872 *Z* executed a stamped transfer of the mortgagee's interest in the deed of mortgage in favour of *R*. *R* treating the order of the 23rd September 1871 as an interlocutory one, presented the instrument of the 20th April 1872 to the Court, and prayed that it would proceed with the suit. The Court proceeded with the suit, and gave *R* a decree. This decree was reversed by the Court of first appeal, on the ground that that instrument did not cure the defect of the transfer by endorsement, and that the order of the 23rd September 1871 was final. The decree of the Court of first appeal was affirmed by the High Court in June 1873. Thereupon *R* made a criminal charge against *Z* of cheating in respect of the transfer by endorsement. This charge was eventually dropped and was followed by a reference to arbitration by *R* and *Z*. According to the agreement to refer, which was dated the 17th August 1874, the dispute between the parties was whether *R* should return the deed o
mortgage to *Z*, and *Z* return the R2,301 to *R* or not
The arbitrators made an award, which was dated th
18th August 1874, which directed, *inter aliâ*, that *I*
should return the deed of mortgage to *Z* and *Z* retur
the R2,301 to *R*. The deed was returned to *Z*, but th
money was not returned to *R*. In 1875 *Z* applied
under Regulation XVII of 1806, to foreclose the mort
gage. In 1880 the mortgage having been foreclosed, *S*
as *Z*'s representative, sued for proprietary possession o
the mortgaged property. The lower Courts held tha
all the acts of *R* and *Z* subsequent to the disposal o
R's suit of 1869 were fraudulent and collusive, an
done with a view to evade the stamp law, and th
person actually interested in the deed of mortgag
was *R* and not *S*, and on this ground, as well as o
other grounds, dismissed *S*'s suit. *Per* STRAIGH
J.—That the transfer by endorsement of the deed o
mortgage, notwithstanding such transfer was no
stamped, transferred to *R* the mortgagee's interest i
the deed; that such interest could not be re-transferre
to *Z* except by a formal instrument stamped accor
ing to law, inasmuch as any other mode of re-transf
would leave *Z* under the same disabilities as regar
the stamp law as *R*, as any suit instituted by
would, strictly speaking, be based, not on the deed o
mortgage, but on the re-transfer; and that therefor
under these circumstances, and having regard to th
fact that *Z* had not returned the R2,301 to *R*,

STAMP ACT (I OF 1879)—*continued*

pure conjectures That the unstamped transfer by endorsement was inadmissible to show that *Z* had transferred his interest in the deed of mortgage to *R*, whether *R* or the mortgagor wished to use it in order to show that fact, and consequently *Z* must be still regarded as the person interested in the deed, and *S* was therefore entitled to maintain the suit SHANKAR LAL *v* SUKHRAN I L R., 4 All, 462

3 ——— *Promissory note—Acknowledgment*—The plaintiff sued on two documents, ... one-anna ... ed to ... " and ... "for ... nt of ... gust."

Held that the documents were not mere acknowledgments, but promissory notes, and being payable otherwise than on demand, were not sufficiently stamped, and consequently not admissible in evidence under s 34, Act I of 1879 MANICK CHUND *v.* JOMOONA DOSS . I L R, 8 Calc., 645

S. C MANICK CHUND *v* JOMONA DASS [7 C. L R, 88

4 ——— *Admissibility in evidence—Evidence as to time when stamped*—When a document, which under the stamp laws requires to be stamped, is tendered in evidence, the only question for the Court is whether it bears a proper stamp at the time when it is tendered The Court is not bound, nor is it at liberty, to allow the parties to go into evidence to show at what time the document was stamped KALI CHURN DAS *v* NOBO KRISTO PAL [9 C. L R, 272

NOOR BIBEE *v.* RUMZAN . . 24 W. R., 198

BHAURAM MADAN GOPAL *v* RAMNARAYAN GOPAL [12 Bom, 208

5. ——— *Suit on an unstamped promissory note—Evidence Act (I of 1872), ss. 65, cl (b), and 91*—The plaintiff sued to recover from the

STAMP ACT (I OF 1879)—*continued.*

that the note was a bond, and could be admitted on

note, as he did not seek to prove the consideration otherwise than by the note which was inadmissible in

[I L. R, 12 Bom 443

6 ——— *Suit on unstamped hundi—Admission of liability by defendant*—In a suit brought upon two hundis, which were inadmissible in evidence for want of impressed stamps, the Judge allowed the claim, holding that the defendants' admission in their written statement rendered it unnecessary to put the hundis in evidence *Held*, reversing the decree, that a hundi is "acted upon" within the meaning of s 34 of the Stamp Act where a decree is passed on it, whether proved or admitted, and that the Court cannot give effect to it in either case CHENBASAPA *v* LAKSHMAN RAMCHANDRA [I. L R, 18 Bom, 369

7 ——— *Unstamped balance of account*— ... —*Limita* ... stamped ... meaning ... as an acknowledgment of a particular sum being due, still it may be used for the collateral purpose of showing an acknowledgment of an existing liability in respect of goods sold FATECHAND HARCHAND *v.* KISAN . . . I. L. R., 18 Bom., 614

Contra, MULJI LALA *v.* LINGU MAKAJI [I. L. R., 21 Bom., 201

8 ——— and ss. 17 and 33—*Act XXXVI of 1860, s 13—Act X of 1862, s 15—Unstamped document executed in 1862 out of British India—Penalty.*—A document comprising an assignment of the executant's interest under a will, and also a power-of-attorney, was executed on

STAMP ACT (I OF 1879)—*continued.*

29th May 1882 in Australia and was received in Madras on 22nd June 1882 when the Stamp Act (X of 1862) was in force, which contained no provision for stamping such a document executed out of British India. It was sought in 1890 to use the document in Madras, but it was not stamped. *Held* that no penalty could be levied upon it under the Stamp Act of 1879. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R., 14 Mad., 256

9. ———— and ss. 35 and 39—*Admission of unstamped document in evidence on payment of penalty—Necessity for production of original document.*—Where a Court has occasion to admit a party's unstamped document in evidence upon payment of a penalty under s. 34 and the following sections of Act I of 1879, it is necessary that the original instrument should be before the Court. KALLU *v.* HALKI I. L. R., 18 All., 295

10. ———— *Penalty chargeable only on the production of unstamped or insufficiently stamped instruments—Document tendered as secondary evidence—Copy not admissible.*—By the terms of the Indian Stamp Act, 1879, the provisions of s. 34, which apply to documents either unstamped or insufficiently stamped, have no application when the original instrument, which ought to have been properly stamped, but was not, has not been produced. The clauses of that section deal with, and exclusively refer to, the admission in evidence of original documents which have been either not stamped at all or have been insufficiently stamped. RAJA OF BOBBILI VENKATA SVETA *v.* INUGANTI CHINA

[I. L. R., 23 Mad., 49
L. R., 26 I. A., 262

VENKATA SVETA CHALAPATI *v.* INUGANTI BHAVAYAMANI GARU . . . 4 C. W. N., 117

11. ———— *Notice of allotment of shares not stamped—Evidence of notice of allotment.*—A notice of allotment of shares in a Company, though not stamped, is admissible in evidence to establish the fact that notice of allotment had been given. *In re Whittle Stale's Case, 49 L. J. Ch., 176,* and *Surja Narain Mukhopadhya* v. *Protap Narain Mukhopadhya, I. L. R., 26 Calc., 955, p. 959,* followed. *Per* STANLEY, *J.*, in Original Court and MACLEAN, *C.J.*, and MACPHERSON and HILL, *JJ.*, on appeal. MOHUN LALL *v.* SRI GUNGAJI COTTON MILLS CO. . . . . 4 C. W. N., 369

12. ———— *Admission of document in evidence—Unstamped promissory note admitted as a bond on a payment of stamp duty and penalty—Subsequent rejection too late.*—The plaintiff sued to recover the amount due on three khatas. The defendant objected that the khatas were not duly stamped. The Subordinate Judge held that the instruments were bonds, and as such admitted them in evidence on payment of the proper stamp duty and penalty under s. 34, proviso I, of the Stamp Act (I of 1879). At a subsequent stage of the same suit his successor in office was of opinion that the khatas in question were promissory notes; that as such they could be stamped only at the date of their execution, and that they had been illegally admitted in evidence under s. 34, proviso I. He accordingly dismissed the suit. On appeal, the District Judge agreed with the Subordinate Judge that the instruments sued on were promissory notes, but held that, after they had once been admitted in evidence on payment of the stamp duty and penalty, the question of their admissibility could not be subsequently raised in the suit under proviso III to s. 34 of the Stamp Act. He therefore reversed the decree of the Subordinate Judge, and remanded the case for trial on the merits. Against this order of remand, defendants appealed to the High Court. *Held* that the promissory notes, having been once admitted in evidence, could not afterwards be rejected on the ground of their not being duly stamped. DEVACHAND *v.* HIRACHAND KAMARAJ

[I. L. R., 13 Bom., 449

13. ———— *Inadmissibility of stamped document stamped after execution—Document not duly stamped.*—A receipt (dated 1887) stamped subsequently to execution, but before production in Court, was tendered in evidence. *Held* that the document was inadmissible. S. 34 of Act I of 1879 requires instruments chargeable with duty to be "duly stamped," which in this case meant "stamped before or at the time of execution," as laid down by s. 16 of the Act. JETHIBAI *v.* RAMCHANDRA NAROTTAM . . . . I. L. R., 13 Bom., 484

14. ———— *Instrument admitted as duly stamped—Appellate Court's power to question the admission—Bom. Reg. XVIII of 1827, s. 10.*—Where a Court of first instance has admitted a document in evidence as duly stamped, s. 34, cl. 3, of the Stamp Act (I of 1879) precludes the Appellate Court from questioning the admission of such document. If the Appellate Court considers the document to be insufficiently stamped, it can only proceed under s. 50 of the Act. S. 34 of Act I of 1879 applies to instruments whenever executed, and must therefore be held to override the special provision of s. 10 of Bombay Regulation XVIII of 1827, according to which no instrument requiring a stamp thereunder was valid unless duly stamped. GURUPADAPA BIN IRAPA *v.* NARO VITHAL KULKARNI . . . I. L. R., 13 Bom., 493

15. ———— *Document proposing to borrow on certain conditions—Promissory note—Proposal—Contract Act (IX of 1872), s. 4.*—A letter containing a request to borrow a certain sum of money promising that the same should be repaid with interest on a certain day is not liable to stamp duty. It is not a promissory note, but a mere proposal under s. 4 of the Contract Act (IX of 1872). DHONDBAT NARHARBHAT *v.* ATMARAM MORESHVAR

[I. L. R., 13 Bom., 669

16. ———— *"Chargeable with duty"—Promissory note executed out of British India—Insufficient stamp—Stamp Act, ss. 5 and 18.*—A suit upon a promissory note which had been executed out of British India was dismissed on the ground that the note was insufficiently stamped, and that it could not be admitted in evidence, on payment of the duty chargeable, under s. 34 of the Indian

STAMP ACT (I OF 1879)—*continued.*

Stamp Act On a petition being preferred for the revision of the order of dismissal,—*Held* that s 34 of the Stamp Act did not render the document inadmissible in evidence, that section being appli-

sequence, the obligation to stamp has not arisen MAHOMED ROWTHAN *v* MAHOMED HUSIN ROWTHAN [I. L R, 22 Mad, 337

1 ———— s 37 and s 40—*Arbitration—Award—Evading payment of stamp duty* —Six persons acted as arbitrators in a dispute between two of their fellow villagers, and delivered their award in writing. Subsequently the award was filed in evidence by one of the disputants in the civil suit in the Court of the Munsif of Cuttack, who, on the ground that the document bore no stamp, impounded it and forwarded it to the Collector who ordered the writer to be prosecuted The Deputy Magistrate, to whom the case was referred, summoned the six

to form an opinion as to whether the offence was committed with the intention of evading payment of the proper duty EMPRESS *v* SODDANUND MAHANTY

[I. L R, 8 Calc, 859: 10 C. L R, 365

2. ———— *Duty and penalty on document insufficiently stamped, Determination of* —Under the provisions of the Stamp Act, 1879, the

3. ———— and ss 33, 34, 35, 45, and 50—*Collector's decision that an instrument is chargeable with duty—Duty of Civil Court—Practice—Procedure* —The decision of the Collector

before which the document may come has the duty cast upon it under s 33 of examining it and of determining for itself whether it is duly stamped or not, and, if not, of taking the steps laid down in ss 33, 34, and 35, that decision being subject to revision under s 50 HARIBAI *v* KRISHNARAV GOPAL [I. L R., 22 Bom, 632

1. ———— s. 39—*Deed of release—Endorsement on conveyance—Payment of deficient duty.*—

A deed of release was endorsed on a deed of conveyance for R100 The conveyance bore an impressed stamp for one rupee, but the endorsement was unstamped *Held* that the conveyance was valid, and that the release could be validated on payment of the deficient stamp duty and the penalty under s 39 of the Stamp Act REFERENCE UNDER STAMP ACT, s 46 . . I L. R, 11 Mad, 40

2 ———— *Lost document which is unstamped—Payment of penalty—Secondary evidence of lost document.*—In the case of a lost document no penalty can be levied and secondary evidence admitted, for s 39 of the Stamp Act presupposes that the document on which a penalty can be paid is forthcoming *Kopasan* v *Shamu, 1 L. R, 7 Mad, 440,* followed. RANGA RAU *v* BHAVAYAMMI . . . I L. R., 17 Mad, 473

———— s 41—*Fresh suit—Costs—Civil Procedure Code, 1882, ss. 13, 43* —The plaintiff in a suit upon a certain instrument not duly stamped was compelled to pay the amount of duty and penalty The defendant was the person bound to bear the expense of providing the proper stamp for such instrument The plaintiff, with reference to s 41 of the Stamp Act, 1879, sued the defendant to recover such amount *Held* that such amount could not be regarded as part of the costs in the suit in which it was paid, and a separate suit to recover it was maintainable ISHAR DAS *v* MASUD KHAN [I L R., 6 All, 70

———— s. 49—*Power of reference to High Court* —A bail-bond was executed to a District Munsif, who expressed no doubt as to the amount of duty to

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1 ———— s 50—*Power of Appellate Court as to insufficiently-stamped documents admitted in lower Court* —Where a document has been admitted

2 ————and s. 3, cl. 1—*Unstamped document admitted by original Court on payment of duty and penalty—Power of Appellate Court to review such admission* —Where the Court of first instance has, on payment of the prescribed duty and penalty, admitted an unstamped document as evidence, under s 3, proviso 1, of Act I of 1879, a superior Court sitting in appeal has no jurisdiction to review the lower Court's proceedings, in so far as they concern such admission, except in the case provided for by s 50 of that Act PUNCHANUND DASS CHOWDHRY *v*. TARAMONI CHOWDRAIN

[I. L. R, 12 Calc, 64

3. ———— *Collector, Power of—Reference to High Court—Decision of Provincial Small Cause Court admitting insufficiently stamped document in evidence.—Semble*—A Collector is entitled

STAMP ACT (I OF 1879) - *continued.*

under s. 50 of the Stamp Act to refer to the High Court the decision of a Provincial Small Cause Court admitting in evidence an insufficiently stamped instrument on payment of duty and a penalty. REFERENCE UNDER STAMP ACT, S. 50

[I. L. R., 15 Mad., 259

1. ——— s. 51—*Application for allowance for spoiled stamps—Power of Collector as to inquiry—Transfer of duty to Deputy Collector—Charge of false evidence—Penal Code, ss. 181, 193.* —S. 51, Ch. VI of Act I of 1879, enacts that, "subject to such rules as may be made by the Governor General in Council as to the evidence which the Collector may require, allowance shall be made by the Collector for impressed stamps spoiled in the cases hereinafter mentioned, etc." According to a rule made with reference to that section, "the Collector may require every person claiming a refund under Ch. VI of the said Act, or his duly authorized agent, to make an oral deposition on oath, etc." *Held*, therefore, that the Collector himself is the officer, and no other, to whom power is given by law to make inquiries into applications for allowances for spoiled stamps, to take evidence on oath in reference thereto, and to grant or refuse such applications, and he cannot delegate his authority in the matter. *Held* therefore, where a person had applied for a refund under Ch. VI of Act I of 1879, and the Collector made over the application for enquiry to a Deputy Collector, that the Deputy Collector was not entitled to put the witnesses produced by the applicant on their oaths, and consequently, in reference to the statements of such witnesses, no charge under s. 181 or s. 193 of the Penal Code was sustainable. EMPRESS *v.* NIAZ ALI . . I. L. R., 5 All., 17

2. ——— *Mortgage-deed stamped, but not sued.*—A mortgage-deed, which provided for the transfer of possession of the mortgaged premises, was executed to secure the repayment of money to be advanced for the discharge of certain debts owing by the executants. The instrument was stamped, but not registered; and on its appearing that the amount of the debts in question exceeded the sum named, the intended mortgagee refused to carry out the transaction, and the executants executed a deed of conditional sale of the same premises in favour of another. *Held* that the stamp duty paid on the mortgage could be refunded under Stamp Act (I of 1879), s. 5 (*d*) (6). REFERENCE UNDER STAMP ACT, S. 46

[I. L. R., 16 Mad., 459

3. ——— *Allowance for spoiled stamps—Mistake made when using stamped paper.*—S. 51 (*a*) of the Stamp Act, which permits an allowance being made for spoiled stamps, applies only to cases of accidental spoiling of the paper of which the stamp is made, and does not cover cases of the use of the paper in an ordinary way, in which a mistake has been made. NARASIMHA CHARYULU *v.* APPA RAU

[I. L. R., 18 Mad., 122

4. ——— *Spoiled stamp—Accidental injury to stamp.*—The purchaser at a Court-sale presented a stamped paper for the engrossment of the sale-certificate. The stamp was inadvertently punched by some officer of the Court, but the paper was used as intended and delivered to the purchaser. Subsequently a Deputy Collector, treating the certificate as unstamped, levied the stamp duty together with a penalty. *Held* that the document was duly stamped, and that the amount levied should be refunded. REFERENCE UNDER STAMP ACT, S. 46

[I. L. R., 18 Mad., 235

5. ——— and ss. 3, 31—*Allowance for spoiled stamps.*—Allowance for spoiled stamps may be made under s. 51 of the Stamp Act when a stamped instrument has been endorsed by the Collector under s. 31. REFERENCE UNDER STAMP ACT, S. 46 . . . . I. L. R., 11 Mad., 37

——— s. 61.

See ABETMENT . I. L. R., 8 All., 18

1. ——— and ss. 3 (10) and 57—*Rules of Governor-General, 3rd March 1882, 5 (e) — Construction — Stamped paper — Writing on reverse side, Effect of.*—In exercise of the powers conferred by ss. 9, 15, 17, 32, 51, and 56 of the Stamp Act, 1879, the Governor-General in Council made, and published by a notification, dated the 3rd March 1882, certain rules, and, *inter alia*, rule 5 (*e*), which was as follows: "When a single sheet used under this rule is found insufficient to admit of the entire instrument being written on the side of the paper which bears the stamp, so much plain paper may be subjoined thereto as may be necessary for the complete writing of such instrument, provided that in every such case the side of the sheet which bears the stamp must be covered by a substantial part of the instrument before any part of the latter can be written on the plain paper joined to such sheet. Provided, further, that the part of the instrument written on the plain paper must be attested by the signatures or marks of all the persons executing the document and the witnesses to the same." *Held* that this rule was an enabling rule, and did not make it obligatory on parties not to write on the reverse side of an impressed stamp paper, so as to make it an offence under s. 61 if they did so write. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 176

2. ——— *Promissory note—Insufficient stamp—"Accepting."*—The term "accepting" used in s. 61 of the Stamp Act, 1879, does not mean "receiving," but "executing as acceptor." To receive a promissory note not duly stamped and put it in suit does not constitute an offence under s. 61 of the Stamp Act, 1879 QUEEN *v.* GULAM HUSSAIN

[I. L. R., 7 Mad., 71

3. ——— and s. 64—*Receipt—Acknowledgment by letter.*—Where the receipt of money exceeding R20, in satisfaction of a debt, is acknowledged by letter without a receipt stamp being affixed, the writer is liable to punishment under s. 61 of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 8 Mad., 11

4. ——— *Person receiving an under-stamped promissory note—Person executing note.*—Under s. 61 of Act I of 1879, the "person accepting" a promissory note not duly stamped is the

STAMP ACT (I OF 1879)—*continued.*

person who executes such note as acceptor, not a person who merely receives the note The mere receiver of an unstamped or insufficiently, stamped promissory note is not as such liable to any penalty under this section either as principal or abettor *Queen* v *Gulam Husain, I L R 7 Mad, 71, Queen* v *Nadi Chand Poddar, 21 W R, Cr, 1 Empress* v *Janki, I L R, 7 Bom, 82,* and *Empress* v *Gopal Das, Weekly Notes, All, 1883 p 145* referred to QUEEN EMPRESS *v* NIHAL CHAND [I L R, 20 All, 440

5. ———— *Memorandum of payment*

He was charged and convicted under s 61 of the Indian Stamp Act (I of 1879) for not affixing a

and not a mere statement that money was received IN RE JAMNADAS HARINARAN [I L R, 23 Bom, 54

6 ———— and ss 37 and 40—*Offence against stamp law—Sanction to prosecute—Intention to defraud*—A Collector is not bound to

such offence QUEEN EMPRESS *v* PALANI [I L R, 7 Mad., 537

7 ———— and ss 37, 40, and 69—*Offence under Stamp Act—Execution of unstamped document—Sanction by Collector to prosecute—Procedure—Abetment*—*A* executed to *B* on plain

B to pay the duty and penalty, and, on *B*'s refusal to pay, impounded the instrument and sent it to the Collector The Collector concurring with the opinion of the Civil Court, sanctioned the prosecution in the Criminal Court of both *A* and *B*, but without requiring the payment of the duty and penalty The prosecution resulted in the conviction of *A* under s 61 of the Stamp Act (I of 1879) and of *B* of abetment of *A*'s offence *Held* that the convictions were illegal, inasmuch as the Collector failed to allow an opportunity of paying the duty and penalty *Held* further that mere receipt of an unstamped instrument did not constitute the offence of abetment of the execution of such an instrument. EMPRESS *v* JANKI . I. L R., 7 Bom, 82

8 ———— *Offence under Stamp Act—Omission of treasury officer to give certificate required by rule 5 (b) of the rules made by the Governor-General in Council under Notification 1288 of 3rd March 1882*—The non compliance by the treasury officer or the stamp vendor with the direction to give the certificate required by rule 5 (*b*) of the rules dated 3rd March 1882 issued by the Governor General in Council under ss 9, 15 17, 32, 51, and 55 of the Stamp Act is not an act for which the person purchasing the stamp from him can be punished by the invalidation of the stamp innocently bought by him or under s 61 of the Stamp Act QUEEN EMPRESS *v* TRAILAKYA NATH BARAL I L R, 18 Calc, 33

9 ———— and sch II, arts 52 and 58—*Acknowledgment of receipt of cheque by letter not stamped*—*M* acknowledged receipt of a cheque for R100 by letter The letter was not stamped *Held* that *M* was properly convicted under s 61 of the Stamp Act, 1879 QUEEN EMPRESS *v* MUTTIRULANDI I. L R, 11 Mad, 329

10 ———— and ss 64 and 58—*"Signing otherwise than as a witness, etc," Meaning of—Liability of agent authorized to sign on behalf of principal—Granting of unstamped receipt Refusal to grant stamped receipt by firm—Liability of members of such firm—"Person" Meaning of—Proof of demand of receipt*—The expression "signing otherwise than as a witness etc., as used in s 61 of the Stamp Act, means the writing of a person's name by himself or by his authority, with the intent of authenticating a document as being that of the person whose name is so written An ordinary agent authorized to sign on behalf of his principal would fall within this description and consequently within the purview of the section Where, therefore, a person signed a firm's name to certain letters under the authority of the firm, the circumstance that the body of the letters were

members of a trading partnership So where certain persons, members of a firm carrying on business in Calcutta as general dealers (which firm had acknowledged the receipt of certain sums of money from one *L* and had refused to grant him a stamped receipt), were charged under s 61 of the Stamp Act with having granted an unstamped receipt, and under s 64 of that Act with having refused to grant a duly stamped receipt it was held that their liability depended on whether they were in contemplation of

established by evidence that a requisition for a receipt had been made under s 58 of that Act QUEEN EMPRESS *v* KHETTER MOHUN CHOWDHRY [I L R., 27 Calc, 324
4 C W N, 440

———— s 63 and ss 37 (b), 40, 61—*Prosecution for attempt to defraud Government by understating the value of property in a partition deed*—

STAMP ACT (I OF 1879)—*continued.*

A District Judge impounded a partition-deed produced before him and forwarded it to the Collector under s. 35 of the Stamp Act, 1879, being of opinion that the executant of the deed had committed an offence under s. 63. The Collector under s. 69 sanctioned the prosecution of the executant, who was convicted by the Magistrate of an offence under s. 63 of the Act. On appeal, the Sessions Court acquitted him on the ground that the Collector had not complied with s. 37 (*b*) or s. 40 of the Act. *Held* that the acquittal was wrong. *Empress* v. *Dwarkanath Chowdhry, I. L. R., 2 Calc., 399; Empress* v. *Soddanund Mahanty, I. L. R., 8 Calc., 259; Empress* v. *Janki, I. L. R., 7 Bom., 82*, considered. QUEEN-EMPRESS *v.* VENKATRAYADU

[I. L. R., 12 Mad., 231

——— s. 64 and s. 69—*Refusal to give receipt—Sanction of Collector necessary before prosecution—Jurisdiction, Want of.*—Prosecution for an offence committed in contravention of s. 64 of the Stamp Act (I of 1869) cannot be instituted unless with the previous sanction of the Collector under s. 69 of the same Act. QUEEN-EMPRESS *v.* JETHMAL

[I. L. R., 9 Bom., 27

1. ——— s. 67—*Document executed with intent to defraud revenue.*—The second clause of s. 67 of the Stamp Act, 1879, is not controlled by the first clause of the section, which refers only to bills of exchange and promissory notes, but applies to all cases in which a document is executed with intent to defraud the Government of stamp duty. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 9 Mad., 138

2. ——— and s. 61—*Defrauding Government of stamp revenue by a contrivance or device not otherwise specially provided for—Receipt of unstamped document—Abetment of an offence under s. 61 of Stamp Act, 1879—Penal Code (Act XLV of 1860), s. 40.*—Two letters were written to petitioner in which the writer recommended him to advance sums of money to the bearers of the letters and bound himself to repay those sums, if lent, in case of default on the part of the borrowers. The loans were made by petitioner, who kept the letters. A prosecution having been subsequently commenced against petitioner under s. 67 of the Stamp Act, 1879, for defrauding Government of stamp revenue by an illegal device, and he having been convicted on the ground that when the loans were granted the documents became letters of guarantee and as such liable to stamp duty,—*Held* that the execution of a document which on its face required to be, and was not, stamped, could not be said to be "an act, contrivance, or device not specially provided for by this Act or any other law for the time being in force"; and that punishment for the act of the executant of such a document, if it were punishable at all, was provided for under s. 61 of the Stamp Act, 1879, and it could not therefore be dealt with under s. 67. Also that the act of a person receiving an unstamped document might amount to abetment of an offence, having regard to s. 61 of the Stamp Act, 1879, and to the definition of an "offence" in s. 40 of the Penal Code, and, if so, would be an act provided for by "any other law for the time being in force," and so not within the terms of s. 67 of the Stamp Act, 1879. QUEEN-EMPRESS *v.* SOMASUNDARAM CHETTI

[I. L. R., 23 Mad., 155

——— s. 68—*Court-fee stamps—Sale by unlicensed person—Stamp Act (XVIII of 1869), s. 48—Act VII of 1870 (Court Fees Act), s. 34.*—The sale of Court-fee stamps without a license was not an offence under the Stamp Act (XVIII of 1869), but is now specially made so by s. 68 of Act I of 1879. EMPRESS OF INDIA *v.* JALLU . I. L. R., 4 All., 216

——— s. 69.

See COLLECTOR . I. L. R., 2 All., 806

See COURT FEES ACT, 1870, SCH. I, ART. 8.
[I. L. R., 11 Bom., 526

See EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE—UNSTAMPED OR UNREGISTERED DOCUMENTS.
[I. L. R., 18 Bom., 614
I. L. R., 21 Bom., 201

See LIMITATION ACT, S. 19—ACKNOWLEDGMENT OF DEBTS.
[I. L. R., 18 Bom., 614
I. L. R., 21 Bom., 201

——— sch. I, art. 1.

See CASES UNDER STAMP ACT, 1869, SCH. II, ART. 5.

1. ——— *Acknowledgment—Hath-chitta.*—Whether an account signed by a debtor in the books of his creditor amounts to an acknowledgment within the meaning of the Stamp Act (I of 1879), sch. I, art. 1, is a question depending in each case upon the form and intention of the entry. BINJA RAM *v.* RAJMOHUN ROY . I. L. R., 8 Calc., 282

2. ——— *Stamp duty — Hath-chitta—Evidence—Acknowledgment.*—An account in a hath-chitta, showing advances of money made to, and part-payment made by, the defendant, the whole amount being in the handwriting and signed by the defendant, is admissible in evidence without being stamped. *Brojender Coomar* v. *Bromomoye Chowdhrani, I. L. R., 4 Calc., 885*, followed. BROJO GOBIND SHAHA *v.* GOLUCK CHUNDER SHAHA

[I. L. R., 9 Calc., 127

3. ——— *Acknowledgment—Promise in writing—Contract—Contract Act (IX of 1872), s. 25, cl. 3, and s. 62, ill. (a).*—A khata, or account stated, bearing a stamp of one anna, but containing no promise in writing, *held* to be a mere acknowledgment sufficiently stamped, and not a contract within the meaning of s. 25, cl. 3, of Act IX of 1872. CHOWKSI HIMUTLAL *v.* CHOWKSI ACHRUTLAL

[I. L. R., 8 Bom., 194

4. ——— *Acknowledgment—Balance-sheet—Nikash.*—A nikash or balance-sheet made out and signed by a gomashta of a business showing a balance due by him to the owner of the business is not an acknowledgment of a debt within the meaning of art. 1, sch. I of the Stamp Act, and is admissible in evidence without being stamped. *Brojo*

STAMP ACT (I OF 1879)—*continued*

Gobind Shaha v. *Goluck Chunder Shaha, I L R, 9 Calc, 127,* followed NUND KUMAR SHAHA v SHURNOMOYE DASI . I. L. R., 15 Calc, 162

Hence, where such a letter written *ante litem motam* before limitation in respect of the debt had expired, and at a time when other evidence of the debt was subsisting, was tendered in evidence as an acknowledgment of the debt for the purpose of saving limitation under the provisions of s 19 of the Limitation Act, 1877,—*Held* that the said letter was not inadmissible in evidence by reason of its not having been stamped. BISHAMBAR NATH v NAND KISHORE [I. L R., 15 All, 56

6 ——— and art. 5—*Acknowledgment—Admissibility in evidence*—The defendant, in two letters to the plaintiff in respect of certain contracts to sell Government securities, acknowledged his inability to give delivery, and after calculating the amount of the differences between

S C MANICK CHUND v JOMOONA DOSS [I. L. R, 8 Calc., 645

1 ——— sch. I, art. 4—*Agreement to lease—Correspondence containing agreement to lease—Complete agreement*—Certain correspondence passed between the plaintiff and defendant relating to the lease of a flat in premises in occupation of the plaintiff, which admittedly contained an agreement

... you will give me the option of renewal for another year respectively five months on the same terms." To which the plaintiff replied "You may have the option of retaining it (the flat) for another year on the same terms, but not for a shorter period." In pursuance of an arrangement,

... The option of renewal was given in the unexecuted lease in the following terms "Also with option to renew for another twelve months certain" The defendant having

STAMP ACT (I OF 1879)—*continued*

entered into possession and disputes having arisen, the plaintiff gave him notice to quit, and sued to eject him, alleging that at the most he was a mere monthly tenant The defendant pleaded that under the lease he was entitled to hold for a year The year expired before the suit came on to be heard, and the defendant, not having exercised the option to renew, vacated the premises At the hearing the defendant, in

defendant it was argued that the stamped unexecuted lease must be treated as part of the correspondence and as it was properly stamped, no further stamp was necessary *Held* that, as the correspondence contained a complete agreement independently of the draft and engrossed lease, the latter could not be treated as part of the correspondence, and that consequently the correspondence must be stamped and the penalty paid before it could be admitted in evidence BOYD v KREIG I L R, 17 Calc, 548

2 ——— "*Agreement to lease*"—An agreement by a zamindar to execute a formal deed of lease of his zamindari which is under attachment after obtaining a certificate from the Court under s 305 of the Civil Procedure Code is an "agreement to lease" under art 4, sch I of the Stamp Act REFERENCE UNDER STAMP ACT, s 46 [I. L R, 17 Mad., 280

1 ——— sch. I, art 5—*Agreement or memorandum of agreement relating to the sale of shares—Agreement by correspondence*—Correspondence having passed between the plaintiff and defendant relating to the sale of shares in a certain company by the plaintiff to the defendant, and the sale not having been carried out, the plaintiff in a suit for damages against the defendant sought to prove an agreement for sale from the letters, none of which were stamped *Held* that the letters, though unstamped, were admissible as evidence of an agreement, since they did not constitute an agreement or a memorandum of agreement RAINIER v GOULD . I. L R, 13 Mad, 255

2. ——— *Agreement—Document acknowledging receipt of money for future sale of shares of a company and promising to execute a pukka document of sale*—A document whereby the party executing it purported to sell his right, title, and interest in certain receipts for shares and to execute in future a pukka document of sale thereof, and acknowledged the receipt of R10 001, *held* to be an agreement, and, as such, liable to stamp duty of eight annas under sch I, art 5, of the Stamp Act (I of 1879), the property in the receipt not being intended to pass forthwith. HEPTULA SHEIKH ADAM & CO v ESAFALI ABDULALI . I. L. R, 14 Bom, 316

3. ——— *Letters submitting to*

... I of the Stamp Act.

STAMP ACT (I OF 1879)—*continued.*

GANGARAM KUSHABA RANGOLE *v.* NARAYAN BABAJI RANGOLE . . I. L. R., 19 Bom., 32

4. ———————— and art. 28—*Indemnity note given to railway company by consignee—Agreement*—An indemnity note, passed to a railway company by a consignee and his surety in respect of goods delivered to the consignee, and for which he is unable to produce the railway receipt—by which note they undertake to hold the railway company, its agents, and servants, harmless and indemnified in respect of all claims to the said goods—is not an "indemnity bond" falling under art. 28, sch. I of the Stamp Act (I of 1879), but is an agreement falling under cl. (*c*), art. 5, sch. I of that Act, and consequently chargeable only with a stamp duty of 8 annas. ANONYMOUS

[I. L. R., 5 Bom., 478

5. ———————— *Document—Agreement to pay.*—A document was executed in these terms: "This document, a hand-note, is executed by me for the purpose of purchasing a ghor. I take from you R7. I will pay interest on the sum at a half-anna per rupee per mensem. Having received the R7 in cash, this hand-note is executed." *Held* that the document was not a promissory note, nor a bond, but was an agreement to pay, and as such was chargeable with duty under cl. 5, sch. I of the Stamp Act. *Ferrier* v. *Ram Kulpa Ghose, 23 W. R., 403,* referred to. MURARI MOHUN ROY *v.* KHETTER NATH MULLICK . . I. L. R., 15 Calc., 150

6. ———————— and art. 44 (a)—*Agreement—Mortgage.*—In a contract for work to be performed entered into by a contractor with the Executive Engineer of a district, it was stipulated that payments should be made from time to time to the contractor as the work progressed, and that the Engineer might retain 10 per cent. on the value of the work done to cover compensation for default on the part of the contractor and as security for the proper performance of the contract. *Held* that this contract was chargeable with stamp duty as an agreement under art. 5 (*c*) and not as a mortgage under art. 44 (*a*) of sch. I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879

[I. L. R., 7 Mad., 209

7. ———————— and art. 44—*Mortgage—"Agreement not otherwise provided for."* A license issued to an arrack renter expressly required as one of its conditions that the licensee should deposit a sum equal to three months' rental as a security for the due performance of the contract. The licensee executed a muchalka, stating that he agreed to all the terms and conditions mentioned in the license, *Held* that the muchalka ought to be stamped with an eight-anna stamp. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 134

8. ———————— and sch. II, cl. 2 (a)—*Agreement to rent pasture ground—General Clauses Act (I of 1868), s. 2—Growing grass—Lease—Immoveable property.*—By a rent-note, dated the 28th July 1885, the executant *B* agreed to take for five months from the executee *H* a certain pasture ground attached to the military cantonment at Poona. The note recited that *B* was to graze thirteen she-buffaloes, at R1-10 per head, on the pasture ground, for a consideration of R21-2-0 to be paid to *B* by two instalments; in default of payment of one instalment, the whole amount was to become payable at once. It further recited that, in case the debt remained unpaid beyond the fixed period, *B* was to pay on the amount interest at the rate of 2 per cent. per month. The Collector of Poona was of opinion that the rent-note in question was a lease and sufficiently stamped with four annas. The Inspector-General of Registration held the document to be an agreement falling under art. 5, cl. (*c*), sch. I of the Stamp Act, and chargeable with a stamp duty of eight annas. On reference by the Commissioner to the High Court,—*Held per* BIRDWOOD and PARSONS, *JJ.* (NANABHAI HARIDAS, *J.*, dissenting), that the rent-note in question was an agreement, and as such chargeable with a stamp duty of eight annas under cl. (*c*) of art. 5, sch. I of the Stamp Act (I of 1879). *Held per* NANABHAI HARIDAS, *J.*, that the instrument was a lease and sufficiently stamped with four annas, growing grass being immoveable property within the definition of s. 2 of the General Clauses Act (I of 1868). Should, however, growing grass be not regarded as immoveable property, the instrument was an agreement for, or relating to, the sale of goods, the price being fixed with reference to the quantity to be consumed by the cattle, and, as such, was exempt from stamp duty under sch. II, art. (*a*), of the Stamp Act. IN RE HORMASJI IRANI . . I. L. R., 13 Bom., 87

9. ———————— and sch. II, art. 2—*Interest in land—Agreement to sell standing trees.*—A document bearing a stamp of one rupee stated (*inter aliâ*), "I have sold to you the standing trees of the two villages for R1,601 on condition that those young trees whose trunks do not exceed 2 feet in circumference should not be cut by you, and that I will give you written information to cut the trees of the said villages when you shall have to cut the trees and remove them within two years, etc." *Held* that the document was sufficiently stamped. VOHRA MAHAMADALI *v.* RAMCHANDRA

[I. L. R., 22 Bom., 785

———————— sch. I, art. 8—*Articles of Association—Special resolution—Resolution superseding Articles of Association—Companies Act (VI of 1882), ss. 76, 79.*—A company limited by shares and already possessing Articles of Association proceeded to pass a special resolution in virtue of which a document was drawn up entitled "Articles of Association" in supersession of the Articles theretofore in force. The record of this special resolution was under the provisions of s. 79 of the Indian Companies Act, 1882, sent to the Registrar of Joint Stock Companies to be recorded by him. The document was impounded by the Registrar on the ground that it required to be stamped as Articles of Association, and was not so stamped. Hereafter a reference was made by the Board of Revenue to the High Court under the provisions of s. 46 of the Indian Stamp Act, 1879, as to whether the document in

STAMP ACT (I OF 1879)—*continued*

question required to be stamped *Held* that the Indian Companies Act did not contemplate any such thing as new Articles of Association, and that the document in question was nothing more than the record of a special resolution, and as such did not require to be stamped IN THE MATTER OF THE NEW EGERTON WOOLLEN MILLS

[I. L. R, 22 All, 131

MITTER, . I. L. R., 6 Calc., 1

S C RADHAKANT SHUBA *v* ABHOY CHURN MITTER . 11 C. L. R., 310

2 ——— and art 19—*Cheque—* ... *dence—Post-* *nalty —* fficiently i its ad- self as it es which oked at *Gatty* v. *dra Kant* *R*, 103, stamp of one anna was dated the ... , and the evidence showed it to have been actually drawn on the 8th September, and therefore to have been post dated, it was contended that the cheque was really a bill of exchange payable 17 days after date, and therefore inadmissible in evidence as being insufficiently stamped *Held* in a suit to recover the amount of the cheque on its being dishonoured, that it was admissible in evidence RAMEN CHETTY *v* MAHOMED GHOUSE . I. L. R, 16 Calc, 432

— — sch. I, art. 13—*Security bond for costs of appeal—Court Fees Act (VII of 1870), sch II, No 6*—*Held* by the Full Bench that where a bond is given under the orders of a Court as security by one party for the costs of another, it is subject to two duties—(*a*) an *ad valorem* stamp under the Stamp Act, art 13 sch I, (*b*) a Court-fee of eight annas under the Court Fees Act, art 6, sch II KULWANTA *v* MAHABIR PRASAD

[I. L. R, 10 All, 16

1 ——— sch. I, art. 16—*Certificate of sale*—The stamp duty payable on a certificate of sale is governed not by s. 24, but by sch I, art 16, of the Stamp Act, 1879 REFERENCE FROM DISTRICT JUDGE UNDER S 49 OF STAMP ACT

[I. L. R, 5 Mad., 18

2 ——— *Certificate of sale—Purchase of equity of redemption—Duty*—Where the equity of redemption of an estate is sold in execution of a decree, the stamp duty leviable upon the certificate of sale must be calculated upon the amount of the purchase-money only REFERENCE UNDER STAMP ACT, 1879 I. L. R, 7 Mad, 421

STAMP ACT (I OF 1879)—*continued*

3. ——— *Certificate of sale—Practice—Ad valorem stamp duty—Sale, subject to mortgage lien, of property in several lots—Stamp duty payable by purchaser of one lot, how calculated*—In execution of a decree, certain immoveable property was attached and sold in eight lots to different persons, subject to a mortgage The applicant was one of the purchasers, and applied for a sale-certificate A question arose whether, in computing stamp duty, the whole amount of the principal mortgage debt, or only a proportionate amount of it, was to be deemed a part of the consideration On reference to the High Court,—*Held* that the whole amount of the principal mortgage-debt, ar ... was to to form stamp obtaining a separate sale certificate IN RE THE APPLICATION OF VISHNU KESHAV SATHE

[I. L. R., 10 Bom., 58

4. ——— *Sale certificate Sale subject to incumbrance*—Where property subject to an incumbrance is sold by auction in execution of a decree, the sale certificate should be stamped according to the amount of the purchase money, and not according to the amount of the purchase-money together with the incumbrance JWALA PRASAD *v* RAM NARAIN I. L. R, 15 All., 107

5 ——— *Sale of property subject to mortgage—Valuation of property sold—* ... *—Certificate of* ... hase money unless they have ... Civil Procedure Code, and the sale has been held subject to them Claims admitted by parties or established by the decree of a Court should be entered in the *proclamation of sale as charges* upon the pro- ...

BARAYA *v* SUBRAO RAMCHANDRA YELLAPUR

[I. L. R., 18 Bom., 175

1. ——— sch. I, art. 21—*Conveyance by vendors under one denomination to the same person's purchasers under another denomination*—Eight persons, the owners of a tea estate, purported to convey their rights in the estate to a company, the consideration expressed in the deed of conveyance being £43,320, payable in shares and debentures of the company taken at par The only shareholders

STAMP ACT (I OF 1879)—*continued.*

or debenture-holders of the company were the eight persons who purported to sell the estate to the company. *Held* that, although the conveying parties were the shareholders of the company, there was just as much a sale and transfer of the property and a change of ownership as there would have been if the shareholders had been different persons; and that the proper duty payable on the conveyance was therefore that mentioned in art. 21, sch. I of the Stamp Act. IN RE KONDOLI TEA COMPANY

[I. L. R., 13 Calc., 43

2. ———— and art. 60, cl. (b)—*Transfer of lease—Transfer of a share of a partnership.*—Where a transaction is in substance a sale of a share in a partnership, and the transfer of a share in a lease only forms part of the subject-matter of the sale, as being a part of the partnership assets, the transaction should be regarded not as the transfer of a lease, but as the sale of a share in a partnership, and the duty payable in respect thereof should be that falling under sch. I, art. 21, of Act I of 1879. IN RE MENGLAS TEA ESTATE

[I. L. R., 12 Calc., 383

3. ———— *Company—Winding up—Transfer of property by old to new company—Conveyance.*—An instrument, which is in terms a conveyance of property at an agreed value, is a sale of such property at that price, and is governed by art. 21, sch. I of the Stamp Act (I of 1879). The circumstance that the transaction is a part of a larger transaction cannot affect the character of the instrument. REFERENCE UNDER STAMP ACT, S. 46

[I. L. R., 20 Bom., 432

4. ———— *Conveyance—Transfer of lease.*—When by one and the same deed there is a conveyance of freehold lands and goodwill and a transfer of interest secured by leases, the deed should be stamped under art. 21 of sch. I of the Stamp Act (I of 1879) with an *ad valorem* duty on the conveyance of the freehold property, goodwill, buildings, and erections, and under art. 60 of the schedule with a duty of R5 on the transfer of each of the interests secured by the leases. REFERENCE UNDER STAMP ACT, 1879, S. 46

[I. L. R., 23 Calc., 283

5. ———— *Conveyance.*—The amount payable on a conveyance under the Stamp Act, sch. I, art. 21, is properly calculated on the consideration set forth therein, and not on the intrinsic value of the property conveyed. REFERENCE UNDER STAMP ACT, S. 45 I. L. R., 20 Mad., 27

1. ———— sch. I. art. 22—*Civil Procedure Code (Act XIV of 1882), s. 62—Copy of a document filed with the plaint—Attestation by the Court or its officer.*—Art. 22 of sch. I of the General Stamp Act (I of 1879) does not apply to a copy contemplated by s. 62 of the Civil Procedure Code (Act XIV of 1882), the attestation of which copy by the Court or its officer being not made on the application of the owner of the copy, but solely in consequence of the express direction of the Code, with a view to its being filed for the purpose of identifying the book entry when produced at the hearing. KRISHNAJI SADASHIV RANADE *v.* DULABA

[I. L. R., 15 Bom., 687

2. ———— *Copy of order of Municipal Board certified by the Secretary—Public officer—Evidence Act (I of 1872), ss. 74, 76, and 78.*—*Held* that a copy of an order passed by a Municipal Board on a petition presented to it, and certified as a true copy by the Secretary to the Board, came within art. 22 of the first schedule to the Indian Stamp Act, 1879, and required to be stamped. The Secretary of a Municipal Board is a "public officer" within the meaning of art. 22 of the first schedule to the Stamp Act, 1879, for the purposes indicated therein. REFERENCE UNDER STAMP ACT, S. 46

[I. L. R., 19 All., 293

———— sch. I, art. 25, and art. 5—*Declaration of trust—Agreement.*—An agreement was made between certain persons to transfer the future surplus profits of their respective trades to a trustee, in order that the trustee should hold the fund so to be created on certain trusts declared in the agreement. *Held* that the agreement was liable to stamp duty as a declaration of trust under the Indian Stamp Act, 1879, sch. I, art. 25, and as an agreement under art. 5 (c). REFERENCE UNDER STAMP ACT, S. 46 . I. L. R., 11 Mad., 216

———— sch. I, art. 29—*Instrument evidencing an agreement to secure repayment of loan executed at time of loan—Assignment by way of mortgage of valuable security to secure pre-existing debt.*—Art. 29 of sch. I of the Stamp Act (I of 1879) applies to an instrument evidencing an agreement to secure the repayment of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER . I. L. R., 27 Calc., 587

[4 C. W. N., 524

1. ———— sch. I, art. 36—*Instrument of gift—Endorsement at foot of document.*—On the 3rd of April 1878, on which date the Stamp Act (XVIII of 1869) was in force, *A* passed to *B* a document on plain paper granting *B* an annuity charged on the revenues of a village. On the 24th of April 1879, the Stamp Act (I of 1879) being then in force, *A* adopted *C* as her son, and *C* three days afterwards made the following endorsement upon the document: "I consent to act according to this sanad." *Held that the instrument* should be stamped with a single stamp as an instrument of gift, under art. 36, sch. I of Act I of 1879. IN RE BHAVANIBAI . . I. L. R., 7 Bom., 194

2. ———— and art. 25—*Declaration of trust—Gift.*—Where a donee was directed in an instrument of gift of certain land to maintain the donor out of the profits of the land,—*Held* that the instrument was liable to stamp duty as a gift, and not as a declaration of trust. REFERENCE UNDER STAMP ACT, S. 46 I. L. R., 12 Mad., 89

STAMP ACT (I OF 1879)—*continued*

———— sch. I, art 37—*Partition, Instrument of—Arbitration—Award* —An award directing partition of property, if signed by the parties interested by way of assent to the award, becomes thereby an instrument of partition, and should be stamped accordingly. AMARSI *v* DAYAL
[I. L R., 9 Bom., 50

1. ———— sch. I, art. 38—*Deed acknowledging former adoption and investing the person*

the opinion of the High Court *Held* that the document was distinct from an adoption deed or authority to adopt so as to be liable to stamp duty under Act I of 1879, art 38, sch I, and that it was not liable to any stamp duty. IN THE MATTER OF AMBAI
[I. L R., 13 Bom, 280

2 ———— *Deed confirming adoption*.—A document was written on a ten-rupee stamp paper executed by the executant *M* to one *D*, whereby *M*, after reciting the fact of his having adopted *D*, constituted him the heir to his interest in the undivided family property, and declared him to be the sole owner thereof as the executant's adopted son On the same document *C*, the mother of *D*, and his father *P* endorsed separately their consent to the adoption *Held* that the document was not an instrument conferring an authority to adopt, and therefore not chargeable under art 38 of sch I of Act I of 1879 or under any other article The endorsements therefore were not chargeable with any stamp duty. IN THE MATTER OF HANMAPA
[I L R., 13 Bom, 281

1 ———— sch. I, art 39 (b)—*Lease—Rent*—A mittadar executed a perpetual lease of certain villages for R1 954 per annum Of this, R1 554-10 7, representing the Government peshkash, the lessor directed the lessee to pay to Government and the balance R400 to himself. The lease was written on a 20-rupee stamp paper. *Held* that the sum of R1 954 represented the rent and that the stamp duty was to be calculated thereupon REFERENCE FROM BOARD OF REVENUE
[I L R, 7 Mad., 155

2. ———— sch. I, art. 39 (c), (d)—*Rent—Premium—Mortgage—Lease*.—By a document purporting to be a lease certain land was leased for four years at a rent of R15 per annum Out of the total rent

STAMP ACT (I OF 1879)—*continued*

of the Stamp Act, 1879. By a document purporting to be a rent agreement, the lessee took a shop for five years, agreeing to pay R30 per annum as rent, depositing one year's rent with the lessor, which was to be credited to the rent of the last year of the term *Held* that the deposit of one year's rent with the lessor was not a fine or premium within the meaning of art 39 (*c*) of the Stamp Act, 1879 By a document purporting to be an instrument of mortgage, the owner of certain land, being indebted in a certain sum, conveyed the land to his creditor for nine years in liquidation of the principal and interest of the debt The creditor was to take the produce of the land, enjoy the profits or suffer the loss, and pay R35 per annum as rent *Held* further that the document was a lease with a premium liable to duty under art 39 (*d*) of sch I of the Stamp Act, 1879 REFERENCE UNDER STAMP ACT, 1879
[I L R, 7 Mad, 203

3 ———— and sch II, art 13, cl. (b)—*Kabuliat or lease of immoveable property for any purpose other than that of cultivation—Stamp duty, Exemption from, of such lease*.—A kabuliat or lease relating to immoveable property let to a tenant for any purpose other than that of cultivation is not such a lease as is contemplated by art 13, cl (*b*), of the Stamp Act I of 1879 so as to be exempt from stamp duty, but is chargeable with such duty under sch I, art 39 of that Act NARAYAN RAMCHANDRA *v* DHONDU RAGHU
[I L R, 10 Bom, 173

1. ———— sch I, art 44, cls (a) and (b)—*Mortgage deeds—Covenants for quiet enjoyment—Per Curiam*.—Cl (*a*) of art 44 of sch I of the Stamp Act, 1879, applies only to those deeds in which

property is given, or agreed to be given by the terms of the deed to the mortgagees *Per* GARTH, C.J —The principle of the distinction between the two classes of mortgages named in art. 44 is that, where the title to the land and the possession or immediate right to possession both pass to the mortgagee, the same duty is charged as upon a conveyance by way of sale, but when the title only passes, and possession, or the right to possession, does not, the lower duty is chargeable *Per* MITTER, J —The word "given" in cl (*a*) of art 44 points out that only those transactions are intended to be covered where the transfer of possession takes place in consequence of the agreement on the part of the mortgagor to deliver over possession as part of the security for the mortgage money, but where the mortgagee becomes entitled to enter upon possession irrespective of the consent of the mortgagor to make over possession, cl (*a*) will not apply *Per* FIELD, J.—The Stamp

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STAMP ACT (I OF 1879)—*continued.*

but the effect of the document is such that a mortgagee has merely a right which he can enforce in a Court of law to obtain possession. ANONYMOUS
[I. L. R., 10 Calc., 274

2. ———————— *Construction.*—A mortgage-deed, dated the 4th August 1883, stipulated that possession was to be given to the mortgagee after the 31st May 1818, if the mortgage loan was not entirely repaid by that date. On the question being referred to the High Court, whether cl. (*a*) or cl. (*b*) of art. 44, sch. I, Stamp Act I of 1879, applied to the case,—*Held* that cl. (*b*) applied. The intention of cl. (*a*) is to cover cases of mortgage with possession, and the words "agreed to be given" are to be read as if the words "at the time of execution" immediately followed and qualified the word "given." Cl. (*a*) should be read as if it were worded "when possession of the property * * * is given by the mortgagor at the time of execution, or is agreed to be then given, and not * * * is then agreed to be given." HINGANGHAT MILL COMPANY *v.* REKCHAND
[I. L. R., 8 Bom., 310

3. ———————— *Stipulations not creating fresh obligations.*—Under the ordinary law of mortgage, the mortgagor is bound, so long as the equity of redemption remains with him, to indemnify the estate against expenses incurred in protecting the title. So that where a mortgage-bond contains stipulations under which the mortgagor engages to repay to the mortgagee any costs he may incur in suits brought against him by the mortgagor's co-sharers, and also any debts charged upon the mortgaged property which the mortgagee may pay, the stipulations do not create any fresh obligation, and require no additional stamp duty. DAMODAR GUNGADHUR *v.* VAMANRAV LAKSHMAN . . I. L. R., 9 Bom., 435

4. ———————— *Bond—Mortgage—Stamp Act, 1879, s. 3, cl. 4 (c) and 13, ss. 7, 26, sch. I, art. 13.*—A grower of sugarcane executed a deed whereby he borrowed a sum of R25 as "earnest-money," and covenanted to deliver to the lender on a certain date 21 maunds of rab (unrefined sugar), upon which he was to receive a profit of 9 annas per maund over and above a price to be thereafter fixed at a meeting of growers. He further covenanted as follows: "If the supply of the rab be less than the fixed quantity, and the money still remains due, then the said money thus due, including the profits, shall be paid at the rate of R1 per maund; that in case of my not supplying the rab at all, or selling it at some other place, I will pay the whole amount at once, including the said profits." As collateral security, he hypothecated the produce of a field of sugarcane, the value of which was not stated. *Held* by the Full Bench that the instrument was a "mortgage-deed" within the meaning of s. 3 (13) and art. 44 (*b*) of sch. I of the Stamp Act (I of 1879). *Held* by STUART, *C.J.*, STRAIGHT, *J.*, and BRODHURST, *J.*, that it was also a "bond" within the meaning of s. 3 (4) (*c*) and art. 13 of sch. I, and with reference to the provisions of s. 7 was chargeable with stamp duty solely as a bond under art. 13, the contract being a single one. *Held* by the Full Bench that the proper stamp duty payable on the instrument was four annas. *Held* by STUART, *C.J.*, and STRAIGHT, *J.*, that in estimating the stamp duty payable on the instrument the amount stipulated to be paid by way of penalty in case of breach of the covenant to deliver the rab must not be taken into account. *Reference by Board of Revenue, N.-W. P., I. L. R., 2 All., 654*, doubted; and *Gisborne Subal Bowri, I. L. R., 8 Calc., 284*, referred to by STRAIGHT, *J. Per* STUART, *C.J.*, that, for the purpose of estimating the stamp duty, the amount secured by the instrument was R25, the amount borrowed, plus R11-3, the amount to be paid to the borrower on the 21 maunds at 9 annas per maund, and that the additional profit, *i.e.*, the price fixed at the meeting of growers, not having been ascertainable at the time of execution, fell within the provisions of s. 26 of the Stamp Act, and could not have the effect of adding to the stamp duty. *Per* OLDFIELD, *J.*, that the amount secured or limited to be ultimately recoverable under the instrument was R25, the amount borrowed, plus R21, the sum recoverable at R1 per maund in the event of the borrower's non-delivery of the 21 maunds, and stamp duty was payable on this amount. IN THE MATTER OF GAJRAJ SINGH
[I. L. R., 9 All., 585

See SAMBHU CHANDRA BEPARI *v.* KRISHNA CHARAN BEPARI . . I. L. R., 26 Calc., 179

5. ———————— *Assignment by way of mortgage of valuable security to secure pre-existing debt—Stamp Act (I of 1879), s. 3, sub-s. (13).*—Art. 29 of sch. I of the Stamp Act (I of 1879) applies to an instrument evidencing an agreement *to secure the repayment* of a loan, executed at the time the loan is made, and not to the case of an assignment by way of mortgage of a valuable security to secure a pre-existing debt. It contemplates an instrument contemporaneous with the advance and with the loan. Where an instrument was an assignment by way of mortgage of valuable securities to secure a pre-existing debt, it was held to come under art. 44 of sch. I of the Stamp Act. For the purpose of ascertaining what stamp duty is payable on an instrument alleged to be a mortgage, it is necessary to see if the instrument is a mortgage as defined in the Stamp Act. QUEEN-EMPRESS *v.* DEBENDRA KRISHNA MITTER
[I. L. R., 27 Calc., 587
4 C. W. N., 524

6. ———————— and s. 3 (13), sch. I, art. 29, and art. 5 (c)—*Mortgage—Assignment of growing coffee.*—By an agreement made the first day of September 1884, *A*, in consideration of R1,000 to be advanced to him by *B*, assigned to *B* the whole crop of coffee then growing upon a certain estate, upon trust, *inter aliâ*, to secure the repayment of the sum advanced. It was stipulated that *A* should cultivate the crop till maturity and deliver it to *B*. *Held* that this document was a mortgage liable to duty under art. 44 (*b*) of sch. I of the Stamp Act, 1879. REFERENCE UNDER STAMP ACT, 1879
[I. L. R., 8 Mad., 104

STAMP ACT (I OF 1879)—*continued*

7 ———————— and art 29—*Mortgage advance payable on demand—Power of sale in default of repayment of advance—Pledge* —In consideration of an advance of R1 460 on interest, repayable on demand certain boat owners assigned to *S & Co* their paddy boats the boat owners retaining working and being responsible for the safety of the boats and agreeing so long as the sum advanced with interest should remain unpaid to use their boats for the sole purpose of supplying paddy to *S & Co* and to deliver such paddy (which was to be paid for at the market rate) at the end of each trip as directed by *S & Co* On failure to make repayment on demand *S & Co* were empowered to take possession and to sell the boats *Held* that the document was a mortgage, and not a pledge, and as such should be stamped under art 44 (*b*) of Sch I of the Stamp Act of 1879 IN THE MATTER OF KO SHWAY AUNG *v* STRANG STEEL & CO

[I L R, 21 Calc, 241

8 ———————— *Mortgage—Consideration* —A kanom deed is liable to a stamp duty as a mortgage only, and in calculating the consideration

[illegible]

9 ———————— '*Mortgage deed*'—By

[illegible]

prior charges thereon, should be held by the B company as security for a sum of £32 009 15 10 previously mentioned in the deed *Held* that the clause constituted the document a 'mortgage deed' within the meaning of the Indian Stamp Act 1879 The whole debt of £32 009 15 10 being by the said document secured not only upon the old security of £20 000 first debentures but also upon the £8 000 second debentures and the remaining £5 000 of the first debenture stamp duty was payable on the new security, though a portion of the debt secured was included in the previous document on which duty had been paid, that the document was not a mere agreement to make a transfer, but an agreement to hand over the debentures on the execution of the document, and was therefore in effect an actual transfer, that the 'mortgage deed" was one with possession within art 44 (*a*) of sch I of the Stamp [illegible]

[I L R, [illegible] Mad, 20[illegible]

1 ———————— sch. I, art 46, and s 34 and sch. II, cl. 2—*Agreements for sale of goods—Broker's bought and sold notes—Note or memorandum of sale* —The plaintiffs sued to recover damages for the non acceptance of wheat which the defendant on the 16th May 188[illegible] by two contracts agreed to purchase At the hearing in order to prove the terms of the contracts the plaintiffs tendered two notes or memoranda of the contracts which purported to be signed by the broker and also by the defendant These notes were in fact, the sold notes which the broker had given to the plaintiffs Each of these notes had been stamped with an anna stamp but the stamp on one of them had not been cancelled at all, and the stamp on the other was without any mark of cancellation except a small part of the first letter of the defendant's signature, consisting of a slightly curved line On these notes being tendered in evidence it was objected that they were inadmissible, being unstamped having regard to ss 11 and 34 of the Stamp Act The Court allowed the objection and rejected the notes The plaintiffs then contended that the documents were only memoranda of parol contracts and might be regarded as agreements for the sale of goods and exempt from stamp duty, under cl 2 sch II or at all events admissible on payment of a penalty—ss 7 and 34 *Held* that the documents in question were documents of the nature of a note or memorandum chargeable under art 46 of sch I, and were not exempt from duty under cl 2 of sch II RALLI *v* CARAMALLI FAZAL

[I L R, 14 Bom, 102

———— sch [illegible]

Life policy— [illegible]
TON J —*Held* [illegible]
of 1829 as no [illegible]
life policies of insurance issued before 1860 did not require a stamp RAJNARAIN BOSE *v* UNIVERSAL LIFE ASSURANCE COMPANY

[I L R, 7 Calc, 594 10 C L R., 561

1 ———— sch. I, art 50—*Court Fees Act, sch II, art 10 (a)—Power to vakil to obtain copies from Collector's office—Stamp* —A document

[illegible]

stamped as a power of attorney under art 50 (*b*) of sch I of the Stamp Act 1879 REFERENCE UNDER STAMP ACT, 1879 I L R, 9 Mad, 146

2 ———————— cl. (b)—*Court Fees Act sch II art 10 (a)—Vakalatnama—Power of-attorney* —A document was given to *P* by thirty six persons jointly interested in a certain sum of money authorizing [illegible]
receive pay[illegible]
was a powe[illegible]
proper stam[illegible]
Stamp Act [illegible] REFERENCE UNDER STAMP ACT 1879 I. L. R., 9 Mad., 358

3 ———————— and s 3, cl 16, and s. 7 *Power-of attorney—Instrument of trust* —Ten mirasidars of a village executed an instrument authorizing the person therein mentioned to recover for them from their former agent the perquisites and

STAMP ACT (I OF 1879)—*continued.*

other communal income appertaining to their mirasi rights, to cultivate their maniems, to distribute to them proportionately to their shares the profits of certain common land, etc. *Held* that the instrument was a power-of-attorney and should bear a stamp of R5. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 15 Mad., 386

1. ———— **sch. I, art. 52**—*Tax—Receipt for money paid as taxes—Municipality, Receipt for house-tax exceeding twenty rupees.*—A receipt by a Municipality acknowledging payment of house-tax exceeding twenty rupees requires a receipt stamp under sch. I, art. 52, of Act I of 1879. IN RE KARACHI MUNICIPALITY . I. L. R., 12 Bom., 103

2. ———— **and s. 3, cl. 17**—"*Sarkhat*"—*Receipt.*—The defendant in a suit on a bond set up as a defence that the bond had been paid in part in sugarcane juice, and as evidence of this fact produced a document called a "sarkhat," alleged to be signed by the plaintiff, acknowledging the receipt of sugarcane juice, the price of which exceeded R20. There was nothing in this document which showed that the sugarcane juice had been received in part satisfaction of the bond. *Held* that the document was not a "receipt" within the meaning of the Stamp Act, 1879, but a memorandum of sugarcane juice supplied, and required no stamp. DEBI PRASAD *v.* RUPU . . I. L. R., 6 All., 253

3. ———— *Receipt—Entry signed by creditor in debtor's book discharging debt.*—An entry made by a creditor in the khatta-book of the debtor, and signed by him for the payment of a sum of money in discharge of a debt, is a "receipt" within the meaning of s. 3, cl. 17, of the Stamp Act, and as such must be stamped under art. 52, sch. I of that Act. QUEEN-EMPRESS *v.* JUGGERNATH

[I. L. R., 11 Calc., 267

1. ———— **sch. I, art. 54**—*Release—One-anna adhesive stamp—Full stamp duty leviable.*—A release chargeable with four-annas stamp duty was executed on paper bearing a one-anna adhesive receipt stamp. *Held* that in calculating the stamp due the one-anna stamp ought not to be taken into consideration. *Reference under Stamp Act, s. 46, I. L. R., 8 Mad., 87,* followed. REFERENCE UNDER STAMP ACT, s. 50. . . I. L. R., 15 Mad., 259

2. ———— *Release—Partition, Deed of.*—A Hindu executed in favour of his father as representing the interest of the other members of his family, an instrument by which he relinquished his rights over the general property of the family in consideration of certain lands being allotted to him for life, and certain debts incurred by him being paid. The instrument further provided that the lands allotted to the executant for life should go towards the shares of his sons at any partition effected after his death. *Held* that the instrument was not a deed of partition, but a release and should be stamped accordingly. REFERENCE UNDER STAMP ACT, s. 46.

[I. L. R., 18 Mad., 233

1. ———— **sch. I, art. 57**—*Settlement—Stamp duty.*—Under art. 57 of sch. I of the Stamp Act, 1879, stamp duty on a settlement is to be calculated on the value of the property settled as set forth in such settlement. *Held* that these terms do not mean the value of the interest or interests created by the settlement, but refer to the value of the property settled, which, it was intended by the Legislature, should be set forth in the settlement. REFERENCE UNDER STAMP ACT, 1879 . I. L. R., 8 Mad., 453

2. ———— **and art. 54 and s. 3 (19)**—*Settlement—Testamentary document—Trust-deed.*—An instrument called a trust-deed by the party executing it was intended to have immediate operation. It vested the property in the trustees at once, and the provisions as to the management and the ultimate beneficial interest in the property showed that it was contemplated that its operation might extend beyond the lifetime of the owner. *Held* that the instrument fell under the definition of a settlement in the Stamp Act (I of 1879), and should be stamped accordingly. REFERENCE BY THE COLLECTOR AND SUPERINTENDENT OF STAMPS, BOMBAY

[I. L. R., 20 Bom., 210

———— **sch. I, art. 60**—*Transfer of estates and mining rights held under lease.*—In consideration of a sum of £86,500, two coffee estates, opened out on land held under a lease for fifty years, together with the mining rights therein, also held under lease for a term of forty-eight years, were transferred by deed for the residue of those terms. *Held* that the stamp duty payable on the transfer deed was to be regulated by the provisions of cl. 60 of sch. I of the Stamp Act, 1879. REFERENCE FROM BOARD OF REVENUE UNDER STAMP ACT, 1879

[I. L. R., 5 Mad., 15

———— **sch. II, art. 1 (b)**—*Affidavit.*—S, being desirous of obtaining copies of certain records in a suit in the Court of the Subordinate Judge of Sirsi, appeared before the nazir and clerk of that Court, and made an affidavit to the effect that she was the heir and legal representative of one of the defendants in that suit, and needed the copies for the purpose of producing them in a suit filed against her in the Court at Karwar. The affidavit, together with a duly stamped application, was presented by her pleader to the District Judge, who, being of opinion that the affidavit should be on a stamped paper, referred the case to the High Court. *Held* that the affidavit was exempt from stamp duty under sch. II, art. 1 (*b*), of the Stamp Act (I of 1879). IN RE THE APPLICATION OF SHESHAMMA

[I. L. R., 12 Bom., 276

1. ———— **sch. II, art. 2 (a)**—*Agreement for, or relating to, the sale of goods.*—By an agreement in writing the vendor agreed to sell, and the purchaser to buy, certain salt for a price to be paid at a future date. The salt was to be at purchaser's risk from the date of the execution of the agreement, and, if not removed within a certain time, to revert to, and become the property of, the vendor. *Held* that this document was exempt from duty under sch. II, art. 2 (*a*), of the Indian Stamp Act, 1879. REFERENCE UNDER STAMP ACT, s. 46

[I. L. R., 10 Mad., 27

STATEMENTS MADE OUT OF COURT.

See MAGISTRATE JURISDICTION OF—GENERAL JURISDICTION [I. L. R., 14 Bom., 572

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——— Promulgation of—

See ONUS OF PROOF—MORTGAGE [B. L. R., Sup. Vol., 415

——— Repeal of, Effect of—

See CASES UNDER APPEAL—RIGHT OF APPEAL EFFECT OF REPEAL ON

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 3

See CASES UNDER EXECUTION OF DECREE—EFFECT OF CHANGE OF LAW PENDING EXECUTION

See LIMITATION—STATUTES OF LIMITATION—LIMITATION ACT, 1871 [I. L. R., 1 Bom., 287

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2 Ind. Jur., O. S., 7
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See INSOLVENT ACT, s. 26. [I. L. R., 3 Calc., 434

See TRANSFER OF PROPERTY ACT, s. 53 [I. L. R., 22 Calc., 185
I. L. R., 23 Mad., 184

——— *Doctrine of fraudulent conveyance void against creditors* — The doctrine of a fraudulent conveyance being void as against creditors held to be a principle of Hindu as it is of English law under 13 Elizabeth, c 5 SHAMKISSORE SHAW *v.* COWIE . 2 Ind. Jur. O. S., 7

See SUDHEEKEENA CHOWDHRAIN *v.* GOPEE MOHUN SEIN . . . . . . 1 W. R., 41

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——— 27 Eliz., c 4.

See DEBTOR AND CREDITOR 1 W. R., 41

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——— 43 Eliz., c. 4

See BOMBAY MUNICIPAL ACT, 1888, ss. 143, 144 I. L. R., 16 Bom., 217

See WILL—CONSTRUCTION. [14 B. L. R., 442

——— 3 Jac. I, c. 7.

Stat 3 Jac I, c 7, has not been extended to India WILKINSON *v.* ABBAS SIRKAR [3 B. L. R., O. C., 96

——— 21 Jac I, c. 16

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——— 29 Car II, c. 3

See GUARANTEE 5 B. L. R., 639

See CASES UNDER STATUTE OF FRAUDS

——— 29 Car. II, c. 7.

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——— 2 & 3 Anne, c 4, s. 1.

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——— 7 Anne, c 20,

See VENDOR AND PURCHASER—NOTICE [I. L. R., 6 Bom., 168

——— 8 Anne, c 14

See LANDLORD AND TENANT—PAYMENT OF RENT—GENERALLY [3 B. L. R., O. C., 56

——— 7 Will III, c 3, s 2

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——— **8 Geo. II, c. 6, s. 1.**

See VENDOR AND PURCHASER—NOTICE.
[I. L. R., 6 Bom., 168

——— **14 Geo. III, c. 48.**

See CONTRACT—WAGERING CONTRACTS.
[I. L. R., 23 Bom., 191

——— **21 Geo. III, c. 70, s. 5.**

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL.
[I. L. R., 8 Mad., 24

——— **s. 8.**

See MANDAMUS . 11 B. L. R., 250

See RIGHT OF SUIT—ACTS DONE IN EXERCISE OF SOVEREIGN POWERS.
[I. L. R., 1 Calc., 11

——— **s. 17.**

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[14 B. L. R., 76

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[I. L. R., 8 Calc., 582
I. L. R., 5 Calc., 688

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[I. L. R., 5 Calc., 688

See STATUTE OF FRAUDS.
[5 B. L. R., 639, 643

——— *Construction of section*—"*Inheritance and Succession.*"—*Per* PONTIFEX, *J.*—The true construction of s. 17 of 21 George III, c. 70, must confine the words "their inheritance and succession" to questions relating to inheritance and succession by the defendants. SARKIES *v.* PROSONOMOYEE DOSSEE
[I. L. R., 6 Calc., 794 : 8 C. L. R., 76

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[1 Moore's I. A., 363

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[2 Moore's I. A., 293

——— **37 Geo. III, c. 142, s. 10.**

See JURISDICTION OF CRIMINAL COURT—EUROPEAN BRITISH SUBJECTS.
[7 Bom., Cr., 6

——— **39 & 40 Geo. III, c. 70, s. 3.**

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[I. L. R., 8 Mad., 24

——— **49 Geo. III, c. 126.**

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——— **52 Geo. III, c. 101 (Lord Romilly's**

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[I. L. R., 24 Calc., 418

——— **53 Geo. III, c. 155, ss. 99 and 100.**

See JURISDICTION OF CIVIL COURT—REVENUE . . I. L. R., 1 Mad., 89

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[7 Bom., Cr., 6

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[6 Bom., Cr., 14

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[4 Moore's I. A., 190

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[5 B. L. R., 418, 557

——— **4 Geo. IV, c. 34, s. 3.**

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[I. L. R., 21 Calc., 262

——— **4 Geo. IV, c. 71, s. 17.**

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL I. L. R., 8 Mad., 24

——— **4 Geo. IV, c. 81.**

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[13 B. L. R., 474

——— **6 Geo. IV, c. 16.**

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[2 Moore's I. A., 263

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[4 Bom., O. C., 1

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[1 Moore's I. A., 87

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[3 Moore's I. A., 329

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—— 2 & 3 Will. IV, c 71

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2 & 3 Will IV, c 114

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[2 Moore's I A, 263

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—— 3 & 4 Will. IV, c 85, s 43

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[L. R., 3 I. A, 102
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[7 Bom, Cr, 6

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[1 B L R., O Cr, 1

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[13 B. L R., 392

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[4 Moore's I. A, 179

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[5 Bom., O C, 64
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[4 Moore's I A., 339
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[4 Moore's I. A., 339

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[8 Bom, Cr., 63
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[8 Bom, Cr, 63

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[I. L. R., 21 Calc., 1018

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[I. L. R., 13 Calc., 143
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[I. L. R., 13 Calc., 37
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[I. L. R., 18 Calc., 144, 372

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[8 B. L. R., 305

1. —— *Application of, to Parsis.*—The Statute of Frauds (29 Car. II, c. 3), except so far as it has been repealed, applies to Parsis in India. BAI MANECKBAI *v.* BAI MEHBAI
[I. L. R., 6 Bom., 363

2. —— *Application of—Mahomedans.*—The Statute of Frauds is to some extent in force in the Island of Bombay. The 4th section is not applicable to Mahomedans. MANIKJI MEHERVANJI *v.* RAHIMTULLA ALUBHAI
[1 Bom., Ap., 1

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3. —— *Application of, to the High Court, Original Civil Side.*—*Quære*—Does the Statute of Frauds form any part of the procedure of the High Court in its original jurisdiction? RAM SAGUR DUTT *v.* NOBOGOPAUL MOOKERJEE . . . . . Bourke, O. C., 367

4. —— s. 4—*Application of—European defendant.*—The 4th section of the Statute of Frauds applies to cases in the mofussil in which the defendant alone is a British-born subject. MUTTYA PILLAI *v.* WESTERN . . . 1 Mad., 27

5. —— 21 *Geo. III, c. 70, s. 17—Hindu defendant.*—The 4th section of the Statute of Frauds does not apply to suits in which the defendant is a Hindu. NEKRAM JEMADAR *v.* ISWARIPRASAD PACHURI
[5 B. L. R., 643: 14 W. R., 305

6. —— *Hindu and Mahomedan defendants.*—Where a contract is proved to have been entered into, but no memorandum thereof in writing has been signed by the parties, a Hindu defendant is not entitled to plead the Statute of Frauds, that statute not being applicable to Hindu (or *semble*—Mahomedan) defendants. BORRODAILE *v.* CHAINSOOK BUXYRAM
[1 Ind. Jur., O. S., 70: 1 Hyde, 51

7. —— 21 *Geo. III, c. 70, s. 17—Contract of guarantee.*—A contract of guarantee is a "matter of contract and dealing" within the terms of s. 4 of 21 Geo. III, c. 70, and therefore such a contract made by a Hindu is not affected by s. 4 of the Statute of Frauds. JAGADAMBA DASI *v.* GROB . . 5 B. L. R., 639

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[I. L. R., 17 Calc., 329

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[I. L. R., 22 Calc., 337

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[I. L. R., 14 Calc., 636

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[I. L. R., 17 Bom., 154

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[I. L. R., 20 Bom., 617

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[I. L. R., 13 Bom., 37

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[I. L. R, 8 All, 475

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[I. L. R., 14 Bom, 213

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[I. L. R, 2 Mad., 362

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[14 B. L. R., 115
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See Madras Towns Improvement Act 1871, ss 58, 62 I. L. R., 3 Mad, 129

See Magistrate, Jurisdiction of—Powers of Magistrates
[I. L. R., 18 Bom, 380

See Minor—Cases under Bombay Minors Act I. L. R, 4 Bom, 635

See Pensions Act 1871
[I. L. R., 1 Bom., 523, 531
I. L. R, 2 Bom, 294, 346

See Pre emption—Right of Pre emption I. L. R., 13 All., 224

See Security for Costs—Suits
[I. L. R., 21 Calc, 832

See Supreme Court Bombay
[3 Moore's I. A, 468, 488
5 Moore's I. A, 234

See Transfer of Property Act, s 2
[I. L. R., 12 Calc., 583

See Transfer of Property Act s 99
[I. L. R., 19 Mad, 382

1. ——— **Mode of construction** —The meaning of an Act is to be gathered solely by reference to the Act itself MUDDOOSOODEN DEY *v* RAMACHURN MOOKERJEE 1 Hyde, 100

2. ——— In interpreting statutes the more literal construction ought not to prevail if it is opposed to the intention of the Legislature as apparent by the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated. *Caledonian Railway Company v North British Railway Company, L R, 6 Ap Cas, 114,* referred to. QUEEN EMPRESS *v* HORI
[I. L. R., 21 All., 391

3 ——— *Duty of Court* —Where the terms of an Act are clear and plain, it is the duty of the Court to give effect to it as it stands GUREEBULLAH SIRKAR *v* MOHUN LALL SHAHA [I. L. R, 7 Calc, 127 8 C. L. R., 409

4 ——— *Preamble* —A rule of construction is that the enacting words of a statute may be carried beyond the preamble, if words be found in the former strong enough for the purpose CHINNA AIYAN *v* MAHOMED FAKRUDIN SAIB
[2 Mad., 322

5 ——— *Act XIII of 1859, Preamble and s 2* —Where the enacting sections of a statute are clear, the terms of the preamble cannot be called in aid to restrict their operation or to cut them down QUEEN EMPRESS *v* INDARJIT
[I. L. R, 11 All, 262

6 ——— *Pre-existing state of law* —The pre existing state of the law, as recognized by the tribunals is one of the chief means of interpreting laws of procedure. PRABHAKARBHAT *v* VISHWAMBHAR I. L. R, 8 Bom., 313

7 ——— *Reasons for enacting law—Motives of parties* —If the words of a law are clear and positive they cannot be controlled by any consideration of the motives of the party to whom it is to be applied nor limited by what the Judges who apply it may suppose to have been the reasons for enacting it JODOONATH BOSE *v* SHUMSOONNISSA BEGUM BUZLOOR RUHEEM *v* SHUMSOONNISSA BEGUM
[8 W. R, P. C, 3 11 Moore's I. A., 551

8 ——— *Intention of Legislature in framing Act* —It is not for a Civil Court

9 ——— *Madras Municipal Act (I of 1884)* —*Inaccuracy in Act* —Where in an Act of the Legislature the context discloses a manifest inaccuracy, the sound rule of construction is to eliminate the inaccuracy, and to execute the true intention of the Legislature JENNINGS *v* PRESIDENT, MUNICIPAL COMMISSION MADRAS
[I. L. R., 11 Mad., 253

10 ——— "*Objects and*

STATUTES, CONSTRUCTION OF —*continued.*

to refer, for this purpose, to the various forms in which the Bill was brought before the Legislature. MOOSA *v.* ESSA . I. L. R., 8 Bom., 241

11. ——————— *Specific Relief Act (I of 1877), s 9—Objects and reasons for Bill—Intention of Legislature.—Quære*—Whether in construing an Act the "objects and reasons" for the Bill before it was passed as indicating the intention of the Legislature, can be referred to. *Moosa* v. *Essa, I. L. R., 8 Bom., 241,* referred to. FADU JHALA *v.* GOUR MOHUN JHALA

[I. L. R., 19 Calc., 544

12. ——————— *Reference to objects and reasons and to report of Select Committee.*—In construing a statute the Court cannot refer to the statement of objects and reasons attached to a Bill, or to the report of a Select Committee, or to the debates of the Legislature, but can only look to the statute itself. *Queen-Empress* v. *Kartick Chunder Das, I. L. R., 14 Calc., 721,* and *Romesh Chunder Sannyal* v. *Hiru Mondal, I. L. R., 17 Calc., 852,* dissented from on this point. KADIR BAKHSH *v.* BHAWANI PRASAD

[I. L. R., 14 All., 145

13. ——————— *Penal Code, s. 295 Construction of—Reference to report of Indian Law Commissioners and of Select Committee.*—For the purpose of construing a section of an Act and ascertaining the intention of the Legislature, the report of the Indian Law Commissioners or a Select Committee appointed to consider the Bill may be referred to. *Queen-Empress* v. *Kartick Chunder Das, I. L. R., 14 Calc., 721,* followed. ROMESH CHUNDER SANNYAL *v.* HIRU MONDAL

[I. L. R., 17 Calc., 852

RAMACHANDRA JOISHI *v.* HAZI KASSIM

[I. L. R., 16 Mad., 207

14. ——————— *Administrator-General's Act (II of 1874)—History of passing of Act—Object and reasons for Act and Report of Select Committee on Bill.*—The course of legislation with reference to the creation of the office of Administrator-General and to his duties and powers reviewed and considered in construing Act II of 1874. *Per* TREVELYAN, *J.*—The history of the passing of an Act and the intention of the Legislature in introducing it, though not admissible in England to explain a statute, have been in this country taken into consideration in construing Acts of the Legislature. *Per* PRINSEP, *J.*—The objects and reasons given by the Legislature on the introduction of a Bill, and the Report of the Select Committee on it, may be referred to in construing any Act to show the intention of the Legislature in passing it. *Queen-Empress* v. *Kartick Chunder Das, I. L. R. 14 Calc., 721,* referred to. ADMINISTRATOR-GENERAL OF BENGAL *v.* PREM LALL MULLICK

[I. L. R., 21 Calc., 732

Held by the Privy Council on appeal that it is not required that in a consolidating statute each enactment, when traced to its source, must be construed according to the state of things which existed at a prior time when it first became law; the object being that the statutory law bearing on the subject should be collected and made applicable to the existing circumstances; nor can a positive enactment be annulled by indications of intention. at a prior time, gathered from previous legislation on the matter. Proceedings of the Legislature in passing a statute are excluded from consideration on the judicial construction of Indian, as well as British, statutes. ADMINISTRATOR-GENERAL OF BENGAL *v.* PREMLAL MULLICK . I. L. R., 22 Calc., 788

[L. R., 22 I. A., 107

15. ——————— *Proceedings of Legislature.—Per* PIGOT, *J.*—Proceedings of the Legislature cannot be referred to as legitimate aids to the construction of an Act. *Administrator-General of Bengal* v. *Premlal Mullick, I. L. R., 22 Calc., 788 : L. R., 22 I. A., 107,* followed. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO

[I. L. R., 22 Calc., 1017

QUEEN-EMPRESS *v.* BAL GANGADHAR TILAK

[I. L. R., 22 Bom., 112

16. ——————— *Khoti Settlement Act (Bom. Act I of 1880)—Reference to Debate on Bill in Legislative Council.*—For the purpose of construing an Act, the debate upon the Bill when before the Legislative Council is not to be referred to. GOPAL KRISHNA PARACHURE *v.* SAKHOJIRAV

[I. L. R., 18 Bom., 133

17. ——————— *Marginal notes to sections of Act.*—Marginal notes are no part of an enactment. DUKHI MOLLAH *v.* HALWAY

[I. L. R., 23 Calc., 55

18. ——————— *Marginal notes to sections of Act.*—Marginal notes to sections of an Act do not form part of the Act. *Sutton* v. *Sutton, L. R., 22 Ch. D., 511,* and *Dukhi Mollah* v. *Halwai, I. L. R., 23 Calc., 55,* followed. PUNARDEO NARAIN SINGH *v.* RAM SARUP ROY

[I. L. R., 25 Calc., 858
2 C. W. N., 577

19. ——————— *Codifying, Object of.*—The object of codifying a particular branch of the law is that on any point specifically dealt with the law should thenceforth be ascertained by interpreting the language used in that enactment instead of, as before, searching in the authorities to discover what may be the law, as laid down in prior decisions. The language of such an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before. *Bank of England* v. *Vagliano, L. R., 1891, A. C., 107,* referred to. NOBENDRO NATH SIRCAR *v.* KAMALABASINI DASI . I. L. R., 23 Calc., 563

[L. R., 23 I. A., 18

20. ——————— *Chutia Nagpore Encumbered Estates Acts (VI of 1876 and V of 1884)—Deo Estates Act (IX of 1886)—Marginal notes to Acts.*—The State publication of the Indian Acts being framed with marginal notes, such notes

STATUTES, CONSTRUCTION OF —*continued*

may be used f r the purpose of interpreting an Act KAMESHAR PRASAD v BHIKHAN NARAIN SINGH BHIKHAN NARAIN SINGH v KAMESHAR PRASAD
[I. L. R., 20 Calc., 609

21 ———— *Statutes of limitation* —Statutes of limitation being in limitation of common right are not to be extended by construction to cases not clearly included within their terms PARASHRAM JETHMAL v RAKHMA
[I L. R., 15 Bom , 299

22 ———— *Practice in contravention of the law — Hardship* — A practice which is in contravention of the law even if it is the practice of a High Court cannot justify a Court in construing an Act of the Legislature in a manner contrary to its plain wording Nor can the principles of construction to be applied to an Act be influenced by extraneous considerations such as questions of hardship BALKARAM RAI v GOBIND NATH TIWARI
[I. L. R , 12 All , 129

23 ———— *Distinction between affirmative commands and negative prohibition—Irregularities and illegalities* —As a principle of the interpretation of statutes a distinction must be drawn between cases in which a Court or an official omits to do something which a statute enacts shall be done and cases in which a Court or an official does something which a statute enacts shall not be done In the former case, the omission may not amount to more than an irregularity in procedure In the latter the doing of the prohibited thing is *ultra vires* and illegal and therefore without jurisdiction RAMESHUR SINGH v SHEODIN SINGH
[I L R , 12 All., 510

24 ———— *Stamp duty, Charge of* If the express words of an Act do not warrant or necessitate a demand of duty or charge it is not competent to a Court of law to extend such enactment or to give to the words a meaning beyond their strict and literal signification so as to include any case which may reasonably come within the spirit of the enactment IN THE MATTER OF THE PORT CANNING LAND COMPANY 16 W R , 208

25 ————*Special and general procedure* —Inconvenience pointed out of introducing into Acts relating and intituled as relating to special jurisdiction only provisions affecting civil procedure generally JUDOW MULJI v CHHAGAN RAICHAND . . . I L R., 5 All., 308

26 ———— *Retrospective effect of Act* —Statutes are *primâ facie* deemed to be prospective only "*Nova constitutio futuris formam imponere debet, non præteritis*" *Moon v Durden 2 Exch., 22,* approved of. DOOLUBDASS PETTAMBERDASS v RAMLOLL THACKOORSEYDASS
[5 Moore's I. A., 109

CHUTTERDHAREE MISSER v NURSINGH DUTT SOOKOOL . . 3 Agra, 371
[Agra, F. B , Ed. 1874, 163

27. ———— *Alteration in procedure—Retrospective effect of Act* —Alterations in forms of procedure are retrospective in effect, and apply to pending proceedings HAJRAT AKRAMNISSA BEAM v VALIULNISSA BEGAM
[I. L R., 18 Bom., 429

BALKRISHNA PANDHARINATH v BAPU YESAJI
[I L R , 19 Bom , 204

28 ———— *Acts relating to procedure — Retrospective operation of Act — Dekkan Agriculturists' Relief Act (XVII of 1879), s 73—Dekkan Agriculturists' Relief Act Amendment Act (VI of 1895)* —In this suit the Subordinate Judge of Karmala held that the defendant was an

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the procedure and were therefore applicable to pro-

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rights but simply concerning judicial procedure, it could not affect the present case, as the repeal is not one of Act itself, but only of a section in the same relating to procedure GANGARAM v PUNAM CHAND NATHURAM . I. L R., 21 Bom., 822

29 ———— *Hereditary Offices Act Amendment Act (Bom Act V of 1886), s 2* —S 2 of the Hereditary Offices Act Amendment Act (Bombay Act V of 1886) is not retrospective RAHIMKHAN v FATUBIBI BINTESAHEB KHAN
[I L R , 21 Bom., 118

30 ————*Retrospective effect of Acts Principle as to—Mad Act VIII of 1865* —In a suit for rent for 1865 1866, it was objected that pottahs and muchalkas were not exchanged as required by Act VIII of 1865, which came into force on 1st January 1866 *Held* (reversing the decision of the Civil Judge) that Act VIII of 1865 was inapplicable to the case The general principle is that rights already acquired shall not be affected by the retro-action of a new law Rules as to procedure are not exceptions but the question here was not one of processual, but of material law MORRIS v SAMBAMURTHI RAYAR 6 Mad., 122

31. ———— *Penal provision in statute—Retrospective effect* —Retrospective effect is not to be given to the penal provision of s. 2, Bengal Act VI of 1862 NOBOKANTH DEY v BORADAKANTH ROY . . . 1 W. R., 100

STATUTES, CONSTRUCTION OF —*continued.*

32. ———— *Penal statute—Bengal Excise Act (Beng. Act VII of 1878).*—Penal statute must be construed strictly, *i.e.*, nothing is to be regarded as within the meaning of the statute which is not within the letter and clearly and intelligibly described in the very words of the statute itself. EMPRESS v. KOLA LALANG [I. L. R., 8 Calc., 214: 10 C. L. R., 155

33. ———— *Penal statute—Act XXXI of 1860.*—A penal statute should, when its meaning is doubtful, be construed in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. REG. v. BHISTA BIN MADANNA . . . I. L. R., 1 Bom., 308

34. ———— *Penal Code (Act XLV of 1860), s. 499—English law of defamation.—Semble*—S. 499 of the Indian Penal Code should be construed without reference to the English law. IN RE NAGARJI TRIKAMJI I. L. R., 19 Bom., 340

35. ———— *Repeal by implication—Repugnancy.*—Statutes are not to be held to be repealed by implication, unless the repugnancy between the new provision and a former statute be plain and unavoidable. SITAPATHI NAYUDU v. QUEEN . . . . I. L. R., 6 Mad., 32

36. ———— *Implied repeal—Civil Procedure Code, 1859, s. 187—Act IX of 1850, s. 101.*—A special enactment is not impliedly repealed by a subsequent general enactment, if the two enactments are not so repugnant as to be incapable of standing together. Act IX of 1850, s. 101, was not repealed by s. 187 of Act VIII of 1859. SABAPATI MUDALIYAR v. NARAYANSVAMI MUDALIYAR . . . . . . 1 Mad., 115

37. ———— *Effect of repeal—Retrospective effect—Dekkan Agriculturists' Relief Act, 1879—General Clauses Consolidation Act, 1868, s. 6.*—The general rule is that a repealed statute cannot be acted on after it is repealed; but, as provided in s. 6 of the General Clauses Act, 1868, all matters that have taken place under it before its repeal remain valid. But a new order of a Court, not ancillary or provisional, but directing a further substantive step in the execution of a decree, is a new proceeding which should be governed by the law in force when the order is made, and not by the law which it repeals. An Act passed to promote some public important object, such as the protection of the property of the Dekkan agriculturists, may be given on that account a retro-active operation, if necessary, as the rule against such operation rests itself on such a general public interest, which may, under the circumstances, be deemed of less importance than the one embodied in the Act. SHIVRAM UDARAM v. KONDAJI MUKTAJI [I. L. R., 8 Bom., 340

38. ———— *Law governing suit when law is changed pending suit.*—The law as it exists when a suit is commenced must decide the rights of the parties to the suit, unless the Legislature has expressed a clear intention to vary the relative rights of the parties to each other in the new law. Rule followed in the interpretation of Act X of 1859. BUNGSHEEDHUR DOSS v. MAHOMED KHULFEL . . . . . 1 Hay, 368

39. ———— *Alteration of law while suit is pending—Act XIX of 1857, s. 219—Repeal, Effect of.*—Where the law is altered while a suit is pending, the law as it exists when the action was commenced must decide the rights of the parties, unless the Legislature, by the language used, shows a clear intention to vary the mutual relations of such parties. GUJERAT TRADING COMPANY v. TRIKAMJI VELJI . 3 Bom., O. C., 45

40. ———— *Repeal, Effect of, on right of action.*—A right of action is not taken away by a change in the law, unless by express enactment; but in the case of mere procedure, unless something is said to the contrary, the new law, where its language is general in its terms, applies without reference to the former law or procedure. FRAMJI BOMANJI v. HORMASJI BARJORJI [3 Bom., O. C., 49

41. ———— *Right of suit—Act XVI of 1842—Act VIII of 1868, s. 1—Act XIV of 1870, s. 1.*—On the 27th of June 1866 it was agreed by and between *B*, a zamindar, and *D*, a raiyat, that the latter should pay R20 annually as the rent of his holding, and that for the future no further sum in excess should be demanded or suit brought for enhancement of rent. At the date of the agreement Act XVI of 1842 was in force. The settlement of the district, where the land in respect of which the agreement was made was situate, expired on the 1st of July 1870, before when Act XVI of 1842 was repealed by Act VIII of 1868, which Act was repealed by Act XIV of 1870, both Acts saving any right or title which had already accrued. *Held* that no right of action to avoid or right to repudiate the engagement of the 27th of June 1866 accrued to the zamindar before the passing of those Acts. DEOJEET v. BHUGWANT . 6 N. W., 373

42. ———— *Gujarat Talukhdars' Act (Bom. Act VI of 1888), s. 31, cl. 2—Retrospective operation—Collector refusing to confirm sale without sanction under Act passed whilst decree was under execution.*—A decree upon a mortgage-bond passed against part of a talukhdar's estate on the 15th August 1887 was transferred under s. 320 of the Civil Procedure Code (Act XIV of 1882) to the Collector for execution. The property was sold on the 5th August 1889, but the Collector refused to confirm the sale, as the sanction of the Governor in Council under cl. 2, s. 31 of the Talukhdars Act (Bombay Act VI of 1888), which came into force on the 25th March 1889, had not been obtained. *Held* that the section was not retrospective in its operation, and that the sale should be confirmed, although no sanction had been obtained. When the Act passed, the plaintiff had already acquired a vested right by the decree to have the property sold, and the presumption was that the Legislature did not intend

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to interfere with that vested right That presumption was not rebutted by any intention to interfere appearing in the Act itself KALIAN MOTI *v* PATHUBHAI FALJIBHAI I L R., 17 Bom, 289

43. ——— *Statutes making contracts void and those prohibiting actions on them*—The distinction between enactments which declare contracts absolutely void and those which simply provide that no action shall be brought upon such contracts pointed out VISSAPPA *v* RAMAJOGI . . . . 2 Mad, 341

44 ——— *Statute imposing duty—Action for failure to perform it*—Where a statute imposes a duty, it, without express words gives an act on for the failing to perform that duty, and for wrongfully performing it PONNUSAMY TEVAR *v* COLLECTOR OF MADURA 3 Mad, 35

45 ——— *Limitation Act, XIV of 1859 ss 20, 21*—In interpreting statutes the words ' must" and 'shall" may, in some cases

CHARD

[I L R, 3 Calc, 47: L R., 4 I A, 127

46 ——— *Hindu Wills Act*

47. ——— *Land Acquisition Acts*—Acts relating to the acquisition of lands for public purposes must be construed strictly in favour of the subject SORABJI NASSARVANJI DUNDAS *v* JUSTICES OF THE PEACE FOR THE CITY OF BOMBAY [12 Bom, 250

48 ——— *Statute of Limitations, 21 Jac I, c 16*—Where words have been long used in a technical sense and have been judi

legal import with the words ' out of the realm" or "out of the land" or "out of the territories' and are not to be construed literally RUCKMABOYE *v* LULLOOBHOY MOTTICHUND 5 Moore's I. A., 234

STATUTES, CONSTRUCTION OF—*continued*

49 ——— *Bengal Rent Act, X of 1859 s 77—Meaning of "determined"*—The word "determined" meant legally decided by a Court of competent jurisdiction" GHALIB ALI *v*. KHILLOO

[3 N W, 51: Agra, F B, Ed. 1874, 243

50 ——— *Road Cess Act (Beng Act X of 1871)—Interpretation clause, Construction of*—In a suit on a bond by which certain land admittedly lakhiraj was mortgaged, the purchaser of a portion of the mortgaged property at an auction sale for arrears of road cess due under Bengal Act X of 1871 was added as a defendant and the lower Courts holding that the effect of such a sale was to pass the property to the defendants free of encumbrances, made a decree excluding that portion from liability in respect of the mortgage bond. *Held* on the construction of Bengal Act X of 1871 that the sale had no such effect and that the whole of the property was liable to be sold in satisfaction of the plaintiffs claim Although the effect of an interpretation clause is to give the meaning assigned by it to the word interpreted in all places in the Act in which that word occurs it is not the effect of an interpretation clause that the thing defined has annexed to it every incident which may seem to be attached to it by any other Act of the Legislature It does not follow therefore that because lakhiraj property is defined in the Road Cess Act 1871, to be a tenure all the interests and consequences attached by other Acts to tenures generally, or to particular classes of tenures, become annexed to lakhiraj property UMACHURN BAG *v* AJADANNISSA BIBEE [I L R., 12 Calc., 330

51 ——— *Tax illegally levied*—A statute not only enacts its substantive provisions but as a necessary result of legal logic it also enacts as a legal proposition everything essential to the existence of the specific enactments Where the Legislature has imposed certain duties both upon the tax payer and upon the Municipal Commissioners, and those duties as to the tax payer enforceable by

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at which the duties are to be performed LEMAN *v* DAMODARAYA I L R, 1 Mad., 158

52 ——— *Acts imposing taxes—Ambiguity in Acts*—In order to impose a tax, due, rate or toll upon a subject the framers of the Act or bye law under which such tax etc., is imposed

the bye-law *Semble*—That when a tax is imposed upon goods imported into a town for consumption,

STATUTES, CONSTRUCTION OF
—*continued.*

and such goods, after having been subjected to the tax upon being imported into the town, are afterwards taken out for sale into the neighbouring villages and brought back unsold, such goods are not liable to be subjected to tax a second time. DULLABH SHIVLAL *v.* HOPE . . . . 8 Bom., A. C., 213

53. ——— *Bombay Municipal Act (III of 1872), s. 195—Act for public benefit.*—Where an Act gives power to a Municipality or Corporation for the public benefit, a more liberal construction could be given to it than where powers are to be exercised merely for private gain or other advantage. OLLIVANT *v.* RAHIMTULA NUR MAHOMED [I. L. R., 12 Bom., 474

54. ——— *Letters Patent, High Court, cl. 12.*—Every statute is to be interpreted and applied so far as its language admits, so as not to be inconsistent with the comity of nations or with the established rules of international law. All legislation is, *primâ facie*, territorial. It binds all subjects of the Crown, but only such subjects of other countries as have brought themselves within the allegiance of the Sovereign. KESSOWJI DAMODAR JAIRAM *v.* KHIMJI JAIRAM I. L. R., 12 Bom., 507

55. ——— *Stat. 24 & 25 Vict., c. 67, s. 22—Legislative power of the Governor-General in Council—"Indian territories now under the dominion of Her Majesty"—"Said territories"—28 & 29 Vict., c. 17, Preamble—32 & 33 Vict., c. 98, s. 1.*—The Governor-General in Council has power to make laws and regulations binding on all persons within the Indian territories under the dominion of Her Majesty, no matter when such territories were acquired. His legislative powers are not limited to those territories which, at the date when the Indian Councils Act (24 & 25 Vict., c. 67) received the royal assent (*i.e.*, the 1st August 1861), were under the dominion of Her Majesty. In the preamble to the 28 & 29 Vict., c. 17, and in s. 1 of the 32 & 33 Vict., c. 98, Parliament has placed this construction upon s. 22 of the Indian Councils Act. Even if that construction was erroneous, it has been so declared by Parliament as to make its adoption obligatory. Though a mistaken opinion of the Legislature concerning the law does not make the law, yet it may be so declared as to operate in future. *Postmaster-General of the United States* v. *Early, Curtis' Rep., U. S., p. 86*, referred to. It must be presumed that the laws and regulations of the Governor-General in Council are known to Parliament. *Empress* v. *Burah, I. L. R., 3 Calc., 143 : I. L. R., 4 Calc., 183*, referred to. ABDULLA *v.* MOHAN GIR [I. L. R., 11 All., 490

56. ——— *Repeal of statute which repeals another, Effect of—General Clauses Consolidation Act (X of 1887), s. 7—Reformatory Schools Act (V of 1876), s. 2—Criminal Procedure Code (Act X of 1872), s. 318; (X of 1882), ss. 3 and 399.*—The repeal of a statute repealing another statute does not revive the repealed statute. The law in India as embodied in s. 7 of the General Clauses Act (X of 1897) is the

STATUTES, CONSTRUCTION OF
—*concluded.*

same as the law in England. *Queen-Empress* v. *Madasami, I. L. R., 12 Mad., 94*, and *Queen-Empress* v. *Manaji, I. L. R., 14 Bom., 381*, referred to and approved of. DEPUTY LEGAL REMEMBRANCER *v.* AHMED ALI . . I. L. R., 25 Calc., 333 [2 C. W. N., 11

STATUTORY POWERS.

See CASES UNDER INJUNCTION—SPECIAL CASES—PUBLIC OFFICERS WITH STATUTORY POWERS.

See RAILWAY COMPANY. [10 B. L. R., 241

See ZAMINDAR . 14 B. L. R., 209 [L. R., 1 I. A., 364

STAY OF EXECUTION.

See CASES UNDER EXECUTION OF DECREE —STAY OF EXECUTION.

See PRIVY COUNCIL, PRACTICE OF—STAY OF EXECUTION PENDING APPEAL.

STAY OF PROCEEDINGS.

See CRIMINAL PROCEEDINGS.
[I. L. R., 18 Bom., 581
I. L. R., 23 Calc., 610
2 C. W. N., 498, 639
3 C. W. N., 758

See INSOLVENT ACT, s. 9. [I. L. R., 21 Bom., 297

See PRACTICE—CIVIL CASES—STAY OF PROCEEDINGS . I. L. R., 21 Calc., 561 [I. L. R., 18 Bom., 65

1. ——— *Suits in respect of same subject-matter in different Courts—Civil Procedure Code, 1877, s 20.*—*A*, who was employed by *B & Co.* as their agent at Calicut, instituted a suit for the balance of an account against his principals in the Court of the Subordinate Judge there in July 1878. In December of the same year, *B & Co.* instituted the present suit against *A* for an account and for damages caused by his alleged negligence. *Held* that, as in both suits practically the same issues were triable, *A* was entitled, as having been first to institute his suit, to proceed in the Court in which he had chosen to bring his suit and to have the other suit stayed, but without prejudice to the right of the plaintiffs in the latter suit to institute a cross claim in the Calicut Court. MECKJEE KHETSEE *v.* KASOWJEE DEVA CHUND [4 C. L. R., 282

2. ——— *Procedure—Venue—Right of plaintiff to choose place of trial—Civil Procedure Code (Act XIV of 1882), ss. 27 and 53.*—The plaintiff brought this suit in the High Court

STAY OF PROCEEDINGS—*concluded*

at Bombay against the defendant for defamation alleged to be contained in a notice that appeared in the *Bombay Gazette* on the 9th April 1888 The defendant was the Chairman of the Hinganghat Mill Company The plaintiff had been for some years secretary and manager of that Company In April 1888 he was dismissed from his appointment, and shortly afterwards he filed a suit (No 1 of 1888) in the Court of the Deputy Commissioner at Wardha in the Central Provinces (which was the Court of the district in which Hinganghat is situated) for wrongful dismissal The present suit was filed in July 1888 The defendant took out a summons calling on the plaintiff to show cause why the suit should not be stayed and the plaint returned to the plaintiff in order that, if he thought proper, it might be presented in the Court at Wardha The defendant relied on the following points (1) that neither he nor the plaintiff resided or carried on business at Bombay, (2) that all the defendant's witnesses resided at Wardha, (3) that the other suit (No 1 of 1883) was pending at Wardha and that the decree of that suit would decide the present case also *Held* that the plaintiff was entitled to sue in Bombay GEFFERT *v* RUCKCHAND MOHLA

[I L R, 13 Bom, 178

3 ———— *Civil Procedure Code (Act XIV of 1882) ss 545 546—Partition suit, Preliminary decree in—Preliminary decree Appeal against—Powers of Appellate Court to stay subsequent proceedings* —There is no provision in the Code of Civil Procedure which authorizes a Court to which an appeal is preferred against a preliminary decree for partition to stay pending the hearing of the appeal proceedings taken by the Court which passed the decree subsequent to the passing of such decree BASANTA KUMAR SIRKAR *v* BHUT NATH SIRKAR 1 C W N., 264

STEAM TUGS

1 ———— **Regulation as to tugs**—*River navigation—Towing* —A party having two tugs *A* and *B* undertakes to supply tugs to two vessels *P* and *Q* in the order of their engagements as soon as the tugs are free *A* is first free, and tows *P*, which has the prior claim to Diamond Harbour, where she becomes disabled *B* subsequently tows *Q* and finding *A* disabled at Diamond Harbour leaves *Q* and tows *P* out to sea, returning subsequently for *Q* *Held* that *B* was not justified in leaving *Q* but that she ought to have towed her out to sea without interruption NOWRJEE NUSSERWANJEE *v* JOHANNES . . . 1 Hyde, 293

2 ———— **Government pilots**— *Order to Government pilots prohibiting their engaging tugs at exorbitant charge* —The Government may prohibit its pilots from allowing any vessels under their pilotage charge to be taken in tow of a steamer the owners of which will only render their services on exorbitant terms. ROGERS *v* RAJENDRO DUTT

2 W. R, P. C, 51: 8 Moore's I. A, 103

STOLEN PROPERTY.

		Col
1	OFFENCES RELATING TO .	8934
2	DISPOSAL OF BY THE COURT	8939

See CHARGE TO JURY—SPECIAL CASES—STOLEN PROPERTY

[I. L R, 15 Bom, 369

1 OFFENCES RELATING TO

1 ———— **Concealment of stolen property**—*Penal Code, ss 411 414* —*Held* that the prisoner who having received stolen property concealed it in his house could not be charged and convicted for two offences *viz*, of having dishonestly received stolen property under s 411 Penal Code, and of assisting in the concealment of stolen property under s 414 which applies to persons whose dealing with the stolen property is not of such a kind as to make them guilty of dishonestly receiving or retaining it GOVERNMENT *v* NOWLIA

[1 Agra, Cr, 9

2 ———— *Penal Code (Act XLV of 1860) s 411—Evidence—Pointing out stolen property concealed in a place not under the accused's control* Where the sole evidence against a person charged with an offence under s 411 of the Penal Code consisted of the fact that the accused had pointed out the place where some of the stolen property was concealed in the field of another person —*Held* that this was not in itself sufficient evidence to support a conviction under the above-mentioned section QUEEN EMPRESS *v* GOBINDA

[I L. R., 17 All., 576

3 ———— **Assisting in concealing or disposing of** *Guilty knowledge* —Where persons are charged with assisting in concealing or disposing of property which they know or have reason to believe to be stolen, the nature of the property as well as the circumstances under which it was being made away with must be taken into consideration REG *v* HARISHANKAR FAKIRBHAI

[2 Bom, 136 2nd Ed., 130

4 ———— **Voluntarily assisting in the disposal of stolen property**—'*Believe*'—'*Suspect*' —*Penal Code s 414* —The word "believe" in s 414 of the Penal Code is much stronger than the word 'suspect,' and involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing was stolen property It is not sufficient in such a case to show that the accused person was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient inquiry to ascertain whether it had been honestly acquired EMPRESS *v* RANGO TIMAJI I. L R, 6 Bom, 402

5 ———— *Penal Code ss 193 and 414—Intention to get innocent person punished —Separate offences Conviction of* —Where the petitioner was convicted of having voluntarily assisted in concealing stolen railway pins in a certain person's house and field, with a view to having such

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*continued.*

innocent person punished as an offender,—*Held* that the Magistrate was right in convicting and punishing the petitioner for the two separate offences of fabricating false evidence for use in a stage of a judicial proceeding under s. 193 of the Penal Code, and of voluntarily assisting in concealing stolen property under s. 414, Penal Code. EMPRESS *v.* RAMESHAR RAI . . . . I. L. R., 1 All., 379

6. ———— Money obtained on forged money orders—*Penal Code, s. 410.*—Money obtained upon forged money orders is not "stolen property" within the definition thereof given in the Penal Code, s. 410. QUEEN *v.* MON MOHUN ROY [24 W. R., Cr., 33

7. ———— Receiving stolen property—*Proof of guilty knowledge.*—In a case in which the accused is charged with receiving stolen property, it must be clearly proved that he retained the property with guilty knowledge. QUEEN *v.* YAR ALI. IN THE MATTER OF THE PETITION OF YAR ALI [13 W. R., Cr., 70

8. ———— *Evidence—Penal Code (Act XLV of 1860), s. 411.*—To constitute the offence of receiving stolen property, there must be some proof that some person other than the accused had possession of the property, before the accused got possession of it. ISHAN MUCHI *v.* QUEEN-EMPRESS . . . I. L. R., 15 Calc., 511

9. ———— *Penal Code, ss. 411 and 409—Criminal breach of trust.*—A prisoner cannot be convicted, under s. 411 of the Penal Code, for dishonestly receiving or retaining stolen property, in respect of property which he himself has been convicted, under s. 409, Penal Code, of having obtained possession by committing criminal breach of trust. QUEEN *v.* SHUNKUR . 2 N. W., 312

10. ———— *Property stolen at dacoity—Penal Code, s. 412—Proof of commission of dacoity.*—In order to sustain a conviction, under s. 412 of the Penal Code, of receiving property stolen at a dacoity, it is necessary to prove that the prisoner knew, or had reason to believe, that dacoity had been committed, or that the persons from whom he acquired the property were dacoits. QUEEN *v.* JOGESHUR BAGDEE . . 7 W. R., Cr., 109

QUEEN *v.* BISHOO MANJEE 9 W. R., Cr., 16

11. ———— *Evidence of dishonest receipt of property.*—Where stolen property is found with a person who admits having received it, it may be fairly presumed that the receipt was a dishonest one, unless the receiver's conduct is satisfactorily explained. IN THE MATTER OF THE PETITION OF RAMJOY KURMOKAR 25 W. R., Cr., 10

12. ———— *Penal Code, s. 411—Animal "nullius proprietas"—Bull set at large in accordance with Hindu religious usage—Appropriation of bull.*—A person was convicted and sentenced under s. 411 of the Penal Code for dishonestly receiving a bull, knowing the same to have been criminally misappropriated. It was found that, at the time of the alleged misappropriation, the bull had been set at large by some Hindu, in accordance with Hindu religious usage, at the time of performing funeral ceremonies. *Held* that the bull was not, at the time of the alleged misappropriation, "property" within the meaning of the Penal Code, inasmuch as not only was it not the subject of ownership by any person, but the original owner had surrendered all his rights as its proprietor; that it was therefore "*nullius proprietas,*" and incapable of larceny being committed in respect of it; and that the conviction must be set aside. QUEEN-EMPRESS *v.* BANDHU [I. L. R., 8 All., 51

13. ———— *Penal Code, ss. 83, 411—Discharge of child-thief—Doli incapax—Proof of theft—Conviction of receiver.*—The fact that a child has been tried for theft and discharged under s. 215 of the Code of Criminal Procedure, 1872, on the ground of want of understanding within the meaning of s. 83 of the Penal Code, is no bar to the conviction of a person charged under s. 411 of the Penal Code with receiving the property alleged to have been stolen. QUEEN *v.* BEGARAYI KRISHNA SARANU . . . . I. L. R., 6 Mad., 373

14. ———— *Habitually receiving stolen property—Penal Code, s. 413.*—A person cannot be said to be an habitual receiver of stolen goods who may receive the proceeds of a number of different robberies from a number of different thieves on the same day. In order to support a conviction under s. 413 of the Penal Code of being an habitual receiver of stolen property, it must be shown that the property was received on different occasions and on different dates. QUEEN-EMPRESS *v.* BABURAM KANSARI . I. L. R., 19 Calc., 190

15. ———— Possession of stolen property—*Evidence of theft.*—Possession of property which has been stolen from the owner is generally at best only evidence of theft when the date of the theft is so recent as to make it reasonable to presume, in the absence of explanation, that the person in whose possession the property is found must have obtained the possession by stealing. QUEEN *v.* POROMESHUR AHEER . . . 23 W. R., Cr., 16

16. ———— *Guilty knowledge, Inference of.*—Where property sufficiently identified to be the property of one person is found to be in the possession of another person without leave or license or any legal permission of the owner, it is for the party in whose possession the property is found duly to account for its possession, and unless he can do so a jury may fairly infer, in such circumstances, that it was with a guilty knowledge that the prisoner took that which he knew to be not his own. QUEEN *v.* SHURRUFFOODDEEN . . 13 W. R., Cr., 26

17. ———— *Fraudulent possession of property reasonably suspected of being stolen—Police Act (XIII of 1856), s. 35, cl. (1)—Duty of the prosecution to prove to the satisfaction of the Court that there exist reasonable grounds of suspicion—Onus of proof.*—A person cannot be called on to account for his possession of property under s. 35, cl. (1), of the Police Act (XIII of 1856),

STOLEN PROPERTY—*continued*

1 OFFENCES RELATING TO—*continued*

unless there is evidence which satisfies not the police officer, but the Court after judicial consideration that such property "may be reasonably suspected of being stolen or fraudulently obtained" QUEEN EMPRESS v DHANJIBHAI EDULJI [I. L. R., 20 Bom, 348

18 —— —— — *Presumption—Penal Code s 411—Receiver of stolen property—Presumption as to possession of property after theft*—A common brass drinking-cup was stolen in October 1883 and was discovered in the possession of the accused in September 1884. *Held* in a case in which the accused was tried for receiving stolen property, that his possession of the stolen property, coupled with the fact that he had failed to give an account as to how he became possessed of the property, would under ordinary circumstances raise a probable presumption of his guilt but where, as in this case, such possession was not a recent possession

how his possession was acquired. The question of what is or is not a recent possession of stolen property is to be considered with reference to the nature of the article stolen *Rex* v *Adam 3 C & P, 600 Rex* v *Cooper 8 C & P, 318, Rex* v *Partridge 7 C & P 551* followed INA SHEIKH v QUEEN EMPRESS I L R., 11 Calc., 161

19 ——— ——— *Penal Code s 411—India rubber, Possession of—Smuggling*—Where a person was charged under s 411 of the Penal Code with having received stolen property (rubber the produce of the Government forests at Cachar), and it was not proved that the rubber came from the

[18 W. R., Cr., ...

QUEEN v DASSORUT DASS 18 W. R., Cr, 63

And *see* QUEEN v GOURKE CHURN DOSS [19 W R, Cr, 38 note

20 ——— *Presumption—Dishonest receipt of stolen property—Dacoity—Jury.*—In considering whether the possession of stolen goods raises a presumption of dishonest receipt of stolen property the attention of the jury should be drawn to the necessity of satisfying themselves that the possession is clearly traced to the accused The fact

21. ——— *Possession of members of joint family—Finding stolen property in joint family house*—*Held* the bare finding of stolen property and arms in the house of a joint Hindu family is not such evidence of possession on the part of each of its members as would form a sufficient basis for a conviction QUEEN EMPRESS v NIRMAL DASS I. L R, 22 All., 445

22. ——— — — ——— *Penal Code, ss 411, 414—Concealment of stolen property—Husband and wife*—The only evidence of the receipt of stolen property by a wife was the fact that the property was found in the house where she lived with her husband *Held* that that constituted the possession of the husband rather than that of the wife QUEEN v DESILVA 5 N W, 120

23 ——— Res nullius—*Bull set at large in accordance with Hindu religious usage—Penal Code ss 410 411*—A Hindu who upon the death of

which thereafter is not property which is capable of being made the subject of dishonest receipt or possession within the meaning of ss 410 and 411 of the Penal Code *Queen Empress* v *Bandhu I L R 8 All, 51*, and *Queen Empress* v *Jamura, Weekly Notes All, 1884, p 87*, referred to QUEEN EMPRESS v NIHAL I. L R., 9 All, 348

24 — — *Penal Code ss 403 429—Bull dedicated to an idol*—A bull dedicated to an idol and allowed to roam at large is not *feræ bestiæ* and therefore *res nullius* but *primâ facie* the trustee of the temple, where the idol is worshipped, has the rights and liabilities attaching to its ownership Such an animal can therefore be the subject of theft and criminal misappropriation QUEEN EMPRESS v NALLA [I. L. R, 11 Mad., 145

25 ——— Retaining stolen property—*Penal Code s 411—Knowledge*—The offence of dishonest retention of stolen property under s 411 of the Penal Code may be complete without any guilty knowledge at the time of the receipt ANONYMOUS [4 Mad, Ap, 42

26 —— — — *Evidence of guilty kn*

necessary

retaining s

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27 ——— *Penal Code, s 411—Proof that the property is stolen property necessary—Guilty knowledge of retainer*—Where a person is accused of an offence under s. 411 of the Penal Code he cannot where the circumstances do not raise the presumption that he received the property knowing it to be stolen be convicted of that offence merely because he is in possession of the property and does not account for his possession The prosecution must prove both that the property was stolen and that the accused received it dishonestly QUEEN EMPRESS v BURKE I. L R, 6 All., 224

28. ——— *Penal Code, s 411—Dishonest retention of stolen property—*

STOLEN PROPERTY—*continued.*

1. OFFENCES RELATING TO—*concluded.*

Property belonging to different owners—Separate convictions.—Where a person was found in possession of stolen property identified as belonging to different owners, but it did not appear that he had received such property at different times,—*Held* that such person could not properly be tried and convicted under s. 411 of the Penal Code separately in respect of the property identified by each owner. *Ishan Muchi v. Queen-Empress, I. L. R., 15 Calc., 511,* approved. QUEEN-EMPRESS *v.* MAKHAN [I. L. R., 15 All., 317

29. ———— *Dishonestly retaining stolen property—Penal Code, s. 411—Legal presumption.*—Where a document, purporting to be a Collectorate notice forming part of a record and found by the Court to be genuine, was discovered to be in the possession of persons charged with retaining stolen property, it was held that, in a matter of this kind, it was right to raise legal presumptions arising out of the ordinary course of business and to dispense with direct evidence of the document having been actually on the record or stolen from it. Though it be true that, before a man can be convicted of receiving stolen property knowing it to be stolen, it must be shown that property has been stolen,—*Held* that the disappearance of the document from the record plus the substitution of an imitation of it in its place showed that it must have been taken with a dishonest object. ISHAN CHANDRA CHANDRA *v.* QUEEN-EMPRESS . I. L. R., 21 Calc., 328

2. DISPOSAL OF, BY THE COURT.

30. ———— Right to stolen property—*Property in cash or notes.*—The property in stolen cash, and bills or notes payable to bearer which circulate as cash, is inseparable from possession ordinarily. The property in stolen goods remains in the person from whom they are stolen. ANONYMOUS [1 N. W., Ed. 1873, 298

31. ———— *Currency note—Right to, as between Government and the person from whom it has been stolen, where thief has cashed it at treasury.*—A R 0 currency note was changed by one *M* at the Government Treasury on the Shevaroy Hills. *M* was subsequently convicted by the Sessions Court of Salem of having stolen the note from one *S*. The note was produced in evidence at the trial, and the Court directed it to be given up to *S*, from whom it had been stolen. *Held* that the Sessions Court was wrong. A note of this kind being in legal view money, the property in it passes by mere delivery, and nothing short of fraud in taking an instrument payable to bearer will engraft an exception upon the rule. QUEEN *v.* MUPPEN. IN THE MATTER OF THE PETITION OF COLLECTOR OF SALEM [7 Mad., 233

32. ———— Order of Court as to property—*Restoration of property by Criminal Court—Remedy by suit in Civil Court.*—If personal property, of which a complainant has been forcibly or illegally deprived, comes into the Magistrate's hands,

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF, BY THE COURT—*continued.*

he may order its restoration to its owner, otherwise the complainant must seek to recover it or its value through the Civil Court. RAMJEEBUN DOOBEY *v.* LUCHMONEE DABEA . W. R., 1864, Cr., 5

33. ———— *Criminal Procedure Codes, 1861, 1869, s. 132A.*—Under s. 132A, Criminal Procedure Code (Act VIII of 1869), no order can be passed with reference to the disposal of any property in a Criminal Court, unless that property is produced before the Court: such order must be made at the time of passing judgment. IN THE MATTER OF THE PETITION OF RASH MOHUN GOSHAMY. RASH MOHUN GOSHAMY *v.* KALI NATH RAHA . . . . . 19 W. R., Cr., 3

34. ———— *Disposal of, by Magistrate where no order had been made by lower Court—Criminal Procedure Code, 1869, ss. 132A, 132B.*—The Assistant Magistrate, on a review of the proceedings of the Subordinate Magistrate, passed orders directing that certain produce should be delivered over to the parties whom he considered entitled thereto. The Subordinate Magistrate had passed no orders under s. 132A of the Criminal Procedure Code. *Held* that the orders of the Assistant Magistrate were made without any jurisdiction. ANONYMOUS . . . . 5 Mad., Ap., 22

35. ———— *Disposal of, where prisoner acquitted.*—Where a person was accused of dishonestly receiving stolen property, knowing it to be stolen, and was discharged by the Magistrate on the ground that there was no evidence that the property was stolen,—*Held* that the Magistrate was competent, believing that the property was stolen, to make an order under s. 418 of Act X of 1872 regarding its disposal. EMPRESS *v.* NILAMBHAR BABU . I. L. R., 2 All., 276

36. ———— *Disposal of, by Criminal Court—Criminal Procedure Code, 1872, Ch. XXX, ss. 415, 416, 417—Restoration of property made over by the police.*—*A* was charged before the police with theft of certain property. The police considered that no theft had been committed, and reported the matter to a second class Magistrate, who, agreeing with the police, ordered the property to be restored to *A*. On application by the complainant, the District Magistrate found that *A* had removed, though not dishonestly, the property from *B*, a deceased person, and ordered the property to be given by the police to *B*'s heirs. It was so given. *Held* that the provisions of Ch. XXX of the Code of Criminal Procedure do not apply to such a case. Ss. 415, 416, and 417 contemplate proceedings preliminary to, and independent of, inquiry. Upon general principles, where there has been an inquiry, or a trial, and the accused person is discharged or acquitted by any Criminal Court, that Court is bound to restore that property into the possession of the person from whom it is taken, unless, as provided for by s. 418, such Court is of opinion that "any offence appears to have been committed" regarding it, then such order as appears right for the disposal of the property may be made. The High Court

STOLEN PROPERTY—*continued*

2 DISPOSAL OF BY THE COURT—*continued*

cannot d rect the restoration of the property already delivered by the police under the illegal order of the District Magistrate IN RE ANNAPURNABAI

[I L R, 1 Bom, 630

IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN BASUDEB SURMA GOSSAIN v NAZIRODDEEN I L R, 14 Calc, 834

But *see* IN RE HAREE BUNDHOO SANTRA

[5 W R., Cr, 55

37 ———— *Criminal Procedure Code 1882 s 517—High Court's Criminal Procedure A t (X of 1875) s 115—'Any property"—Reference to Police Magistrate—Evidence on reference Review* —The words 'any property" in s 115 of the High Court's Criminal Procedure Act (X of 1 75) include as well property voluntarily produced before the Magistrate by a witness in the case as property seized by the police or found on the

he consid rs upon the statements of their respective cases to have made out a *primâ facie* case, and it is not competent to the High Court to review the decision at which the Magistrate so arrives REG v RAMDAS SAMALDAS EX PARTE MADAVJI DHARRAMSI 12 Bom, 217

38. ———— *Criminal Procedure Code 1882 s 523 Code of Criminal Procedure 1872, ss 415 and 416—Delivery of property seized or stolen—Inquiry into ownership* —The

deliver it to tl e p rson e titled to it instead of to the person from wh m it is taken *In re Annapurnabai, I L R, 1 Bom, 630*, distinguished QUEEN EMPRESS v JOTI RAJNAK I L R, 8 Bom, 338

39 ———— *Criminal Procedure Code 1882 ss 517 520 523—Order of Magistrate restoring property alleged to be stolen—District Magistrate Power of, to set aside such order* Where on acquittal a Criminal Court passes an order for rest ration of property und r s 517 of the Criminal Procedure Code (Act X of 1882) the proper c urse for the D trict Mag strate, if he thinks the order improper is to direct it to be stayed und r s 520 and not to tr at the property as subject to an order un ler s 523 of the Code, and set it aside QUEEN EMPRESS v ABHRAM UMAR

[I L R., 8 Bom, 575

40 ———— *Criminal Procedure Code, 1882, s 517—Order as to property as to which offence has been committed—Discharge of accused* —On the dismissal of a charge against certain persons of criminal misappropriation of an elephant the Magistrate under s 517 of the Criminal Procedure Code ordered the elephant to be given to the Executive Engineer of the district, holding that it was the property of Government *Held* that the dismissal of the charge being in fact a finding that no offence had been committed in respect of the elephant the Magi trate's order was illegal and must be set aside In setting it aside the High Court held, however following *In re Annapurna Bai, I L R 1 Bom 630* that they had no p wer to order restitution of the elephant IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN BASUDEB SURMA GOSSAIN NAZIRUDDIN

[I L R., 14 Calc, 834

41. ———— *Criminal Procedure Code s 517—Disposal of calf not in esse at time of theft* —R's cow having been stolen the thief after a lapse of a year and a half was convicted Six months after the theft V innocently purchased the cow which wh le in his possess on had a calf The Magistrate under s 517 of the Code of Criminal Procedure ordered that the cow and calf should be delivered up by V to R *Held* that as the calf was not even in embryo at the date of the theft, the order to deliver up the calf was illegal IN RE VERNEDE I L R, 10 Mad, 25

42. ———— *Criminal Procedure Code (Act X of 1882) ss 517 and 523—Disposal of property produ ed before a Court during an inqu ry—Restoration of previous possession if no offence has been committed* —S 517 of the Code of Criminal Procedure is the only section under which a Co rt can make an order for the

Otherwise the only legal order which the Court can pass is one rest ring the previous possession A Presidency Magis rate fin ling the evidence not sufficient to warrant a convict on discharged the accused but ord red the property wh ch ha l been produced durin the u quiry to be d tained until the title of the ri htful owner was proved bef re a Civil Co rt On a subsequent day he apparently acting under s 523 of the Code ordered the property to be delivered to the c mplainant from wl ose possess on it had not been tak n *Held* that both the orders were *ultra vires* The Mag strate was theref re d r cted to dispose f tl e property in a legal manner If he found that the case f ll within s 517 he should pass such ord r as he thought fit; if he found that it did not h must r store the previous possess on IN RE DEVIDIN DURGAPRASAD

[I L R., 22 Bom, 844

43. ———— *Criminal Procedure Code (Act X of 1882), ss 517, 523 524—*

STOLEN PROPERTY—*continued.*

2. DISPOSAL OF, BY THE COURT—*continued.*

Order as to standing crops on land of which person asks to be restored to possession.—On 27th September 1897 complainant charged one *R* with criminal trespass under s. 447 of the Penal Code (Act XLV of 1860). He alleged that in the previous July *R* had entered into possession of the land and sowed rice upon it, and that, when in the month of September 1897 he (the complainant) went to the field, *R* had turned him out by force and refused to vacate the land. On the 17th November 1897 the case was heard by the third class Magistrate, who convicted *R* of the offence charged. On the following day (18th November 1897) the complainant applied to the Magistrate under s. 522 of the Code of Criminal Procedure (Act X of 1882) to be restored to possession of the land and of the standing crops. The Magistrate ordered possession of the land to be restored to the complainant, but attached the crops under Ch. XLIII of the Criminal Procedure Code. Thereupon one *V* intervened and claimed the crops as having been sown by himself. His claim was disallowed, and the crops were ordered to be sold and the proceeds credited to Government under ss. 523 and 524 of the Code. *Held* that the order passed under ss. 523 and 524 with reference to the crops were illegal. The crops were not property in respect of which the offence was committed, nor were they used in the commission of the offence. They were not such property as is referred to in s. 517, 523, or 524 of the Criminal Procedure Code. NARAYAN GOVIND *v.* VISAJI I. L. R., 23 Bom., 494

44. ———— *Criminal Procedure Code, 1882, ss. 517 and 523—Evidence of ownership—Evidence Act (I of 1872), s. 25—Confession made to police officer, Admissibility of, for other purposes than as a confession.*—Statements made to the police by accused persons as to the ownership of property which is the subject-matter of the proceedings against them, although inadmissible as evidence against them at the trial for the offence with which they are charged, are admissible as evidence with regard to the ownership of the property in an inquiry held by the Magistrate under s. 523 of the Criminal Procedure Code (Act X of 1882). An order, after trial, made by a Criminal Court for the restoration of property under s. 517 of the Criminal Procedure Code (Act X of 1882) is conclusive as to the immediate right to possession; where an order has to be made under s. 523, the Magistrate may in the inquiry proceed on such evidence as is available and make an order for handing the property to the person he thinks entitled. This does not conclude the right of any person. The real owner may proceed against the holder of the articles or for damages as for conversion. The High Court declined to interfere with an order, made by a Magistrate under s. 523 of the Criminal Procedure Code, for the delivery of property, where the Magistrate made such order upon the mere evidence [...] confession of the accused to the police that the [...] stolen from the adjudged owner. [...]BHOVAN MANEKCHAND [...] I. L. R., 9 Bom., 131

STOLEN PROPERTY—*concluded.*

2. DISPOSAL OF, BY THE COURT—*concluded.*

45. ———— *Criminal Procedure Code, 1882, s. 517—Order for the disposal of property by first class Magistrate—Appeal from such order to the Sessions Court.*—A decree-holder preferred a complaint against his judgment-debtors, charging them, under s. 207 of the Penal Code (Act XLV of 1860), with concealing certain moveable property for the purpose of screening it from execution. Some property was found by the police to have been so concealed in the house of a third person. The chief constable took possession of it, and kept it in his custody pending the inquiry which the first class Magistrate was about to make in the matter. Before the Magistrate entered upon the inquiry, the complainant caused the property in the custody of the police to be attached and sold in execution of his decree against the accused. At the Court-sale the complainant himself purchased the property, and thereupon the Magistrate ordered the property to be handed over to him. This order was reversed on appeal by the Sessions Judge. *Held* that the order of the first class Magistrate for the disposal of the property was not, and could not have been, made under s. 517 of the Criminal Procedure Code (Act X of 1882), as the Magistrate did not hold any inquiry, nor form any opinion on the conclusion of such inquiry as to whether "any offence appeared to have been committed regarding such property." The Session[s] Judge had therefore no jurisdiction to hear an appeal from the first class Magistrate's order. IN R[E] ANANT RAMCHANDRA LOTLIKAR [I. L. R., 10 Bom., 1[...]

46. ———— *Criminal Pr[ocedure] Code, 1882, ss. 517, 520.*—An order pa[ssed] under s. 517 of the Code of Criminal Procedure [may] be revised by a Court of appeal, although no a[ppeal] has been preferred in the case in which such [order] was passed. QUEEN-EMPRESS *v.* AHMED [I. L. R., 9 Mad.[...]

STOPPAGE IN TRANSITU.

See SALE OF GOODS. [I. L. R., 17 B[...]

See VENDOR AND PURCHASER— RIGHTS AND LIABILITIES OF. [2 [...] I. L. R., 14 [...]

STORING JUTE.

———— *Storage of jute withou[t ...]—Beng. Act II of 1872, s. 34—Crimin[al Procedure] Code, 1861, Ch. XV.*—Before a c[...] storing jute in a warehouse without a [...] had under s. 4 of Bengal Act II of 187[2 ...] should be taken under the provisions o[f the] Criminal Procedure Code, 1861, as re[...] of the former Act. QUEEN *v.* BHUG[...] KOONDOO [...] 19[...]

STRANGER

——— Introduction of, into joint family

See HINDU LAW — JOINT FAMILY — POWERS OF ALIENATION BY MEMBERS—OTHER MEMBERS [I L R, 1 All, 429 I L R., 2 All, 898

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——— Duty of—*Conflict of opinion in High Courts*—The lower Courts are bound to follow the concurrent decisions of the Court to which they are subordinate and are not at liberty to adopt a contrary opinion expressed by another High Court KORBAN ALLY MIRDHA *v* SHARODA PROSHAD AICH [I L R, 10 Calc., 82

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1. ——— Suit brought to set aside probate—A Subordinate Judge has no jurisdiction to try a suit brought to set aside a probate BULDEB SURMAH *v* TARANATH SURMAH 22 W R., 416

2 ——— Complaint under Mad. Reg IV of 1816, s 35, cl 1.—A Subordinate Judge has jurisdiction to entertain a complaint under cl 1, s 35, of Madras Regulation IV of 1816 *Ponnusami Pillai v Pachai I L R, 2 Mad, 335*, overruled. PONNUSAMI *v* KRISHNA [I L R., 5 Mad., 222

3 ——— Trial of suit for land—*Officer appointed in the Sonthal Pergunnahs under s 2 Act XXXVII of 1855—Bengal Civil Courts Act, 1871—Reg III of 1872 s 5*—An officer in the Sonthal Pergunnahs, appointed by the Lieutenant Governor of Bengal under s 2 of Act XXXVII of 1855, although vested with powers of a Subordinate Judge under Act

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

VI of 1871, has jurisdiction to try suits in regard to land, etc., where the value of the matter in dispute exceeds the value of R1,000. RAM RUNJUN CHUCKERBUTTY *v.* RAM PROSAD DASS . 5 C. L. R., 128

4. ——— **Valuation of suits**—*Joinder of causes of action Civil Procedure Codes (Act VIII of 1859), ss. 8, 6; (Act X of 1877), s. 15—Bengal Civil Courts Act (VI of 1878), s. 19* - S. 6 of Act VIII of 1859 (corresponding with s. 15 of Act X of 1877), which provided that "every suit shall be instituted in the Court of the lowest grade competent to try it," did not affect the jurisdiction of a Subordinate Judge to try a suit wherein several causes of action were joined, the cumulative value of which was over R1,000; notwithstanding that, if separate suits had been brought on these several causes, such suits must have been instituted in the Court of the Munsif. MASHOOLLAH KHAN *v.* RAM LALL AGURWALLAH

[I. L. R., 6 Calc., 6

5. ——— *Suit for account—Claim valued at less than R5,000, but value to be accounted for exceeds that sum.—Quære*—Whether a first class Subordinate Judge has jurisdiction to try a suit for an account where the plaint states that the property in the hands of the defendants, in respect of which the account is prayed, exceeds R5,000, but values the claim at R100. MANOHAR GANESH *v.* BAWA RAMCHARAN DAS . I. L. R., 2 Bom., 219

6. ——— **Appeal transferred**—*Bengal Civil Courts Act, 1871—N.-W. P. Rent Act, 1881, ss. 206, 207, 208.*—A Subordinate Judge, to whom an appeal is transferred under the Bengal Civil Courts Act (VI of 1871), has not the power to dispose of it in the manner provided by ss. 206, 207, and 208 of the N.-W. P. Rent Act, 1881: the District Judge alone has the power to dispose of appeals in that manner. *Ram Parsad* v. *Rai Kishen, I. L. R., 6 All., 36,* followed. LODHI SINGH *v.* ISHRI SINGH

[I. L. R., 6 All., 295

7. ——— **Appeal transferred**—*Act XII of 1881, ss. 189, 206, 207, 208.*—The defendant in a suit instituted in a Civil Court set up as a defence that it was cognizable in the Revenue Court. The Court of first instance (Munsif) disallowed this defence, and gave the plaintiff a decree. The defendant appealed to the District Judge, again contending that the suit was cognizable in the Revenue Court. The appeal was transferred by the District Judge to the Court of the Subordinate Judge. The Subordinate Judge dismissed the suit on the ground that it was not cognizable in the Civil Courts, but in the Revenue. *Held* that, looking to the terms of ss. 189, 206, 207, and 208 of the N.-W. P. Rent Act, the District Judge had no power to transfer the appeal to the Subordinate Judge, who had not the power vested in the Appellate Court by s 208. RAM PRASAD *v.* RAI KISHEN . I. L. R., 6 All., 36

8. ——— *N.-W. P. Rent Act (XII of 1881), ss. 93, 206, 207, and 208—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 22, cl 3—Transfer of appeal in a Rent Court suit from the District Judge to the Subordinate Judge—Powers exerciseable by the Subordinate Judge.*—Cl. (3) of s. 22 of Act XII of 1887 makes ss. 206, 207, and 208 of Act XII of 1881 applicable to appeals in suits within s. 93 of Act XII of 1881 when such appeals have been transferred under s. 22 of Act XII of 1887 by a District Judge to a Subordinate Judge and are being heard by such Subordinate Judge. NANDAN PRASAD *v.* CHANGUR

[I. L. R., 16 All., 363

9. ——— **Appeal referred by District Judge**—*Bengal Civil Courts Act (VI of 1871), s. 26—Power of review—Civil Procedure Code, 1859, s. 376.*—Where a Subordinate Judge hears and disposes of an appeal referred to him by the District Judge under Act VI of 1871, s. 26, he does so as District Judge, and has therefore by implication the same power of reviewing his judgment as a District Judge has under s. 376, Act VIII of 1859. IN THE MATTER OF SHAMA CHURN BHUTT *v.* PAYNE & Co.

[18 W. R., 292

10. ——— **Appeal from Munsif after Act XIV of 1869**—*Assistant Judges in Bombay Presidency.*—A decision passed on appeal from a decision of a Munsif by an Assistant Judge, subsequent to the date on which Act XIV of 1869 came into operation (14th March 1869), and prior to the date on which the Assistant Judges in the Bombay Presidency were invested with appellate powers under the Act (4th April 1869), was not illegal, as the Act did not alter the procedure as regards appeals against decisions passed by Courts constituted under the old Regulations, under which the Assistant Judges had power to hear appeals. SAKHO NARAYAN KHANDALKAR *v.* NARAYAN BHIKAJI KHANDALKAR

[6 Bom., A. C., 238

11. ——— **Power to inquire into application for execution of decree against ancestor of Sirdar**—*Agent for Sirdars.* Where a person's name was entered in red ink in the Dekkan Sirdars' list, indicating that he was entitled only to the rank and precedence of a third class Sirdar, it was held that a Subordinate Judge had jurisdiction to inquire into an application for execution of a decree passed against his ancestor by the Agent for Sirdars in the Dekkan. MAHARAJ GIR *v.* ANANDRAV

[8 Bom., A. C., 25

12. ——— **Mortgage lien above limit of Subordinate Judge's jurisdiction**—*Attachment.*—One *D* applied to the subordinate Court of Sasvad for the attachment and sale of certain immoveable property in execution of a money-decree, under which the sum of R1,317-4-9 was due to him from his judgment-debtor. On the attachment of the property, the applicant presented a petition to the Court to the effect that he (applicant) had a mortgage lien on the property for R16,368, and that it might be sold subject to his lien and possession as mortgagee. The Subordinate Judge raised the question whether he had jurisdiction to entertain the application and inquire into the merits of the alleged mortgage. He was of opinion that he had, and referred the question for the opinion of the High Court, which concurred in

SUBORDINATE JUDGE, JURISDICTION OF—*continued*

his opinion and answered the question in the affirmative PURSHOTAM SIDHESHVAR *v* DHONDU AMRIT [I L R., 6 Bom, 582

13 ——— Mortgage lien, Inquiry into—*Collateral inquiry into a mortgage lien on attached property—Insolvency of a judgment debtor*—The plaintiff obtained a decree against *N* and *R* for R1to 11-0 in the first class subordinate Court of Satara and applied for execution against the person of *R* When brought before the Court, *R* applied to be declared an insolvent under s 344 of the Civil Procedure Code (Act X of 1877) The plaintiff then moved the Court to strike off his application for execution and to send his decree to the second class subordinate Court of Vita for execution The Satara Court accordingly sent the decree to the Vita Court and granted a certificate to the plaintiff under ss 223 and 224 of the Civil Procedure Code The Satara Court also

ing to *N* and *R* Thereupon one *V T* claimed a

14 ——— Subordinate Judge invested with powers of Small Cause Court—*Civil Procedure Code, 1877 s 525—Arbitration award*—A Subordinate Judge although invested

ordinary pecuniary jurisdiction to receive and file awards of arbitrators under s 525 of the Civil Procedure Code (Act X of 1877) BALKRISHNA *v* LAKSHMAN I L R., 3 Bom, 219

15 ——— *Difference between a Court of Small Causes constituted under Act XI of 1865 and a Court of a Subordinate Judge invested with the jurisdiction of a Judge of a Small Cause Court under s 28 of Act XIV of 1869—Transfer of decree for execution—Act XI of 1865 s 20—Code of Civil Procedure (Act XIV of 1882), s 223—Act XIV of 1869, s 28*—The Courts of Subordinate Judges invested with the jurisdiction of a Judge of a Small Cause Court under s. 28 of Act XIV of 1869 do not thereby become "Courts of Small Causes constituted under Act XI of 1865" They merely exercise a similar jurisdiction This makes their decisions final in the cases to which the jurisdiction extends but it does not imply that the variations of procedure prescribed expressly for the Courts constituted under Act XI of 1865 are applicable to Courts constituted under a different Act and subject to different conditions The Court of a Subordinate Judge exercising Small Cause Court powers is under s ... of the Code of Civil Procedure (Act XIV of 1882) one of the other Courts exercising jurisdiction of a Court of Small Causes and as such its procedure is governed by the Civil Procedure Code without the variations provided by Act XI of 1865 Under s 223 (*d*) of the Civil Procedure Code the Court which has passed a decree in its Small Cause Court juris ... ecorded in ... branch of ... Court for ... under s 20 ... the two branches or sides of the Subordinate Judge's Court may be regarded as different Courts BHAGVAN DAYALJI *v* BALU I. L. R, 8 Bom 230

16 ——— *Suit for interest due on a mortgage*—The plaintiff sued to recover

rupees and that the mortgage debt had been paid off The suit was tried before a Subordinate Judge in his capacity of a Judge of a Court of Small Causes who held that he had no jurisdiction to go into the

PETHE *v* GANPATRAV DAMODAR [I L R, 10 Bom, 8..

17. ——— *Civil Procedure Code (Act XIV of 1882) s 295—Decree passed by Subordinate Judge—Decree by same Court in exercise of its Small Cause jurisdiction Rateable distribution of assets*—Certain moveable property

tion of a money-decree passed in his favour by the same Subordinate Judge in his Small Cause jurisdic ... the pro... *Held* that ... h a Sub... ... of 1869, s. 28 with Small Cause powers, acquires the jurisdiction of two Courts he does not become the Judge

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

of two Courts, but remains the Judge of a Subordinate Court. MALHARI *v.* NARSO KRISHNA

[I. L. R., 9 Bom., 174

18. ———— *Execution of decree—Transfer of decree for execution—Act XI of 1865, s. 20—Act XIV of 1869, s. 28.*—The plaintiff, having obtained a money-decree against *H* and others in a suit in the Subordinate Judge's Court at Dhulia, applied for execution by attachment and sale of their immoveable property. That property was accordingly sold, but before the realization of the assets the defendant, who also had obtained a money-decree against the same judgment-debtors in the same Court in its Small Cause jurisdiction, applied for the execution of his decree by attachment and sale of the immoveable property which had already been attached at the instance of the plaintiff. The Court, under s. 295 of the Civil Procedure Code (Act XIV of 1882), rateably distributed the proceeds of the sale between the plaintiff and the defendant. The plaintiff now brought this suit in the Small Cause jurisdiction of the Subordinate Judge's Court at Dhulia to recover from the defendant the amount paid to him, alleging that it had been illegally paid, as the procedure laid down in s. 223 of the Code had not been followed. *Held* that, as ruled in *Bhagavan Dayalji* v. *Balu, I. L. R., 8 Bom., 230,* a Subordinate Judge invested with Small Cause Court powers has generally to follow the procedure prescribed in the Code of Civil Procedure. This governs his proceedings both in trial and execution, whether the suit is a Small Cause suit or not. If the two jurisdictions assigned to the Subordinate Judge's Court and to the Subordinate Judge personally are locally co-extensive, there is no distinction of sides or branches. But where, as in some cases, the ordinary jurisdiction is wider locally than the Small Cause jurisdiction, the Court is, in that part of its territory which lies outside the Small Cause Court jurisdiction, to be regarded as a separate Court so far that a decree in a Small Cause should not generally be executed on property beyond the Small Cause jurisdiction without a transfer, *i.e.*, a dealing with the execution as in a suit tried in the usual way for reasons to be recorded in writing. As all is done by the same Judge, a suggestion and an order recorded in the case are sufficient without a formal transmission as to a distant Court. DHARAMDAS SANTIDAS *v.* VAMAN GOVIND

[I. L. R., 9 Bom., 237

19. ———— *Civil Procedure Code (Act XIV of 1882), s. 111—Set-off exceeding pecuniary jurisdiction of the Small Cause powers of the Subordinate Judge—Practice.*—In a suit brought by the plaintiff to recover R36-7-9 from the defendant, under the Small Cause jurisdiction of a Subordinate Judge, the defendant claimed to set off R72, which exceeded the pecuniary jurisdiction of the Judge as a Small Cause Judge. On reference to the High Court,—*Held* that the set-off might be pleaded by the defendant. The Judge would exercise his Small Cause Court jurisdiction in trying the claim of the plaintiff and his ordinary jurisdiction in trying the set-off. RAMPRATAB *v.* GANESH RANGANATH

[I. L. R., 12 Bom., 31

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

20. ———— *Appeal—Suit cognizable by a Court of Small Causes—Act XI of 1865, ss. 2, 6, 12, 21—Bombay Civil Courts Act (XIV of 1869), s. 28—Final decision.*—The plaintiff sued to recover R5 as damages for the wrongful removal of a tree. The suit was filed in the Court of a second class Subordinate Judge, who was invested, under Act XIV of 1869, s. 28, with the jurisdiction of a Judge of a Court of Small Causes. The case, which was in itself of the nature of a Small Cause, was, however, tried as an ordinary suit according to the rules of the Civil Procedure Code. The Subordinate Judge rejected the plaintiff's claim. An appeal was made to the District Court, which reversed the Subordinate Judge's decree, and awarded the claim. *Held* that, the suit having really been a Small Cause, no appeal lay to the District Court, though the Subordinate Judge did not use the procedure of Act XI of 1865. Having the Small Cause Court jurisdiction, the Subordinate Judge must be taken to have dealt with the case under that jurisdiction, even if he was not quite alive to it at the time. A suit taken cognizance of under s. 2, 6, or 12 of the Mofussil Small Cause Court Act (XI of 1865) does not cease to be a suit tried under the Act, because of some divergence from its summary procedure. A surplusage of form and elaborateness does not change the character of the decision for the purpose of its finality. S. 28 of the Bombay Civil Courts Act (XIV of 1869) does not, when jurisdiction is given under it, necessarily divide the Court into two separate Courts; but still it creates an additional and distinct jurisdiction. Since Act IX of 1887 came into force, the Court is to be regarded as two Courts in such cases. PITAMBER VAJIRSHET *v.* DHONDU NAVLAPA

[I. L. R., 12 Bom., 486

21. ———— *Suit against Trustee—Person collecting or receiving subscriptions for building a temple—Civil Procedure Code (Act XIV of 1882), s. 30.*—A person collecting and receiving subscriptions for the purpose of building a temple, in pursuance of a resolution come to at a meeting of the community, holds them in the capacity of a trustee, and a suit in respect thereof should be filed, under s. 30 of the Civil Procedure Code (Act XIV of 1882), in a Subordinate Judge's Court, and not in a Small Cause Court. MAHOMED NATHUBHAI *v.* HUSEN . **I. L. R., 22 Bom., 729**

22. ———— **Power of Subordinate Judge to try Munsif's case**—*Act XVI of 1868, ss. 13, 15, 16—Bengal Civil Courts Act (VI of 1871), ss. 19, 20—Civil Procedure Code, ss. 15, 578.—Per* PETHERAM, *C.J.*, and BRODHURST, MAHMOOD, and DUTHOIT, *JJ.*—The object of ss. 19 and 20 of the Bengal Civil Courts Act, 1871, was to create in the District Judge, Subordinate Judge, and Munsif concurrent jurisdiction up to R1,000. *Per* PETHERAM, *C.J.*—S. 15 of the Civil Procedure Code is a proviso to those sections. The word "shall" in that section is imperative on the suitor. The word is used for the purpose of protecting the

SUBORDINATE JUDGE, JURISDICTION OF—*continued*

Courts The suitor shall be obliged to bring his suit in the Court of the lowest grade competent to try it The object of the Legislature is that the Court of the higher grade shall not be overcrowded with suits Whenever an Act confers a benefit, the donee may exercise the same or not at his pleasure The proviso is for the benefit of the Court of the higher grade, and it is not bound to take advantage of it If it does not wish to try the suit it may refuse to entertain it If it wishes to retain the suit in its Court, it may do so, it is not bound to refuse to entertain it *Per* DUTHOIT, *J*—The words in s 57 of the Civil Procedure Code "shall be" are an instruction which the Court is bound to follow, and they are therefore a restraint upon jurisdiction The effect therefore, of the concurrent jurisdiction

JJ S 15 of the Civil Procedure Code is a rule of procedure, not of jurisdiction, and whilst it lays down that a suit shall be instituted in the Court of the lowest grade, it does not oust the jurisdiction of the Courts of higher grades *Kussick Chunder Mohunt* v *Ram Lall Shaha*, 22 *W R*, 301, and *Sufee-ool lah Sircar* v *Begum Bibee*, 25 *W R*, 219, followed *Per* OLDFIELD *J*—S 15 of the Civil Procedure Code is a provision entirely of procedure as distinct from jurisdiction, and its effect on s 19 of the Bengal Civil Courts Act is that the jurisdiction of the District Judge and Subordinate Judge extends to all original suits cognizable by the Civil Court, subject in its exercise to a certain procedure, namely, that the suits be instituted in the Court of lowest grade competent to try them *Held*, therefore, by PETHERAM *C J*, and OLDFIELD BRODHURST, and MAHMOOD, *JJ*, where a Subordinate Judge had tried a suit which a Munsif, a Court of a lower grade might have tried, that the Subordinate Judge had not acted without jurisdiction The plaint in such suit had been in the first instance presented to the Munsif, who had returned it to be presented to the Subordinate Judge *Per* DUTHOIT, *J* The decree of the Subordinate Judge would not be liable to be reversed in appeal for want of jurisdiction, for the jurisdiction was there, though it ought not to have been exercised This view of the matter was consistent with the received canon of construction, that unless the Legislature uses negative words or words showing an intention to treat the observance of a rule of procedure as essential, the rule will ordinarily be treated as a direction only Under the circumstances, therefore, the District Judge had, in appeal, correctly refused to entertain the plea of defect in jurisdiction NIDHI LAL *v* MAZHAR HUSAIN

[I. L R., 7 All., 230

23 ———— *Civil Procedure Code (Act XIV of 1882), s 15—Munsif, Jurisdiction of* S 15 of the Civil Procedure Code does not preclude a Subordinate Judge from trying a suit within the jurisdiction of the Munsif's Court.

Ledgard v *Bull, L R, 13 I A, 134*, distinguished MATRA MONDAL *v* HARI MOHAN MULLICK

[I L. R, 17 Calc., 155

See AUGUSTINE *v* MEDLYCOTT

[I. L. R, 15 Mad, 241

24 ———— *Bengal Civil Courts Act (VI of 1871), s 18—Sale in execution of decree—Local limits of jurisdiction*—

can only exercise jurisdiction within such local limits *Obhoy Churn Coondoo* v *Golam Ali, I L R, 7 Calc, 410*, and *Prem Chand Day* v *Mokhoda Debi, I L R, 17 Calc, 699*, followed DAKHINA CHURN CHATTOPADHYA *v* BILASH CHUNDER ROY

[I L R., 18 Calc, 526

25. ———— *Concurrent jurisdiction with District Munsif—Suit of less than R2 500 in value Quære*—Whether a Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than R2,500 in value *Matra Mondal* v *Hari Mohan Mullick, I L R, 17 Calc, 155* and *Nidhi Lal* v *Mazhar Husain I L R, 7 All, 230*, followed KRISHNASAMI *v* KANAKASABAI

I L. R., 14 Mad., 183

26. ———— *Bombay Civil Courts Act (XIV of 1869), s 28—Provincial Small Cause Courts Act (IX of 1887), s 33—Judge exercising Small Cause Court jurisdiction*—S 33 of Act IX of 1887 precludes a Subordinate Judge invested with Small Cause Court powers under s 28 of Act XIV of 1869 from entertaining a counter claim beyond the pecuniary limits of his Small Cause Court jurisdiction BAROTE GAGA PARSHOTAM *v* PANJU RAMJAN

[I. L R., 14 Bom, 371

27. ———— *Bengal, N-W P, and Assam Civil Courts Act (XII of 1887), s 13, cl 2—District Judge Power of—Transfer of Property Act (IV of 1882), ss 88, 90—Sale in execution of mortgage decree—Execution of decree*—When Subordinate Judges are appointed by the Local Government with jurisdiction over the whole of a district, the District Judge is not competent, under s 13 (2) of the Bengal N-W P and Assam Civil Courts Act, to assign to them different areas so as to limit or define their respective jurisdictions

thereof, even when the execution is sought by the sale of property other than the mortgaged property lying within the district, but outside the area assigned to it by the District Judge BACHU KOER *v* GOLAB CHAND

I. L. R, 27 Calc., 272

28 ———— *Transfer to Subordinate Judge of appeal petition heard by and pending before District Judge Jurisdiction of Subordinate Judge to hear and determine the appeal*

SUBORDINATE JUDGE, JURISDICTION OF—*continued.*

—*Waiver of objection to jurisdiction, Effect of, when Court has no inherent jurisdiction.*—An appeal, having been entered in a District Court against the decision of a District Munsif, was heard in part by the District Judge, who remanded the suit to the District Munsif for findings on fresh issues. Findings having been duly returned, the District Judge transferred the appeal to the Subordinate Judge, who heard and determined it. *Held* that the District Judge had no power to transfer to a Subordinate Judge an appeal which was part heard and pending before him. The only inherent jurisdiction that a Subordinate Judge has is in original suits under s. 12 of the Civil Courts Act. In appeals he only acquires jurisdiction under the last clause of s. 13 of the said Act, which enables a District Judge to transfer appeals to him, and, unless that section is complied with, the Subordinate Judge has no jurisdiction to hear or determine any appeal. S. 13 does not authorize the transfer to a Subordinate Judge of an appeal part heard and pending before the District Judge. The fact that objection was not taken to the jurisdiction of the Subordinate Judge did not confer jurisdiction upon him, the Subordinate Court not having inherent jurisdiction. KUMARASAMI REDDIAR *v.* SUBBARAYA REDDIAR

[I. L. R., 23 Mad., 314

29. ———————— *Act XIV of 1869, ss. 23 and 24—Subordinate Judge appointed to assist another Subordinate Judge, Powers of.*—Where a Subordinate Judge is deputed, under s. 23 of Act XIV of 1869, to assist another Subordinate Judge, the assistance by the Judge so deputed can only be afforded within the limits of his jurisdiction as fixed by s. 24 of the Act, and cannot be invoked, except in matters within his competence. The plaintiff, having obtained a decree against the defendant in a suit in which the subject-matter of the suit and the amount of the decree exceeded R5,000 in the Court of a Subordinate Judge of the first class, presented it in that Court for execution. The Subordinate Judge transferred it for execution to the second class Subordinate Judge who had been appointed, under Act XIV of 1869, to assist him, and whose jurisdiction extended to R5,000 only. The second class Subordinate Judge ordered execution to issue. The defendant appealed, and this order was reversed. The plaintiff appealed to the High Court, and raised, for the first time, an objection that the second class Subordinate Judge had no jurisdiction to entertain the application for execution. The defendant contended that this objection was taken too late on second appeal. *Held* that the second class Subordinate Judge has no jurisdiction to entertain and deal with the plaintiff's application for execution, and that the plaintiff's objection should be allowed. An objection to the jurisdiction, the validity of which is patent on the face of the proceedings, can be taken at any stage of the proceedings. SIDHESHWAR PANDIT *v.* HARIHAR PANDIT

[I. L. R., 12 Bom., 155

30. ———————— *Malicious prosecution — Suit against a Mamlatdar for malicious prosecution undertaken by him at the instance of his superior officer, to clear his character—Subordinate Judge, Power of, to try such suit.*—The defendant, who was a Mamlatdar, was required by his superior officer to clear his character from certain charges of bribery which had been brought against him in an anonymous letter, and he accordingly prosecuted the plaintiffs whom he suspected of having written the letter. The plaintiffs were convicted and sentenced by a Magistrate, but on appeal were acquitted by the Sessions Judge. The plaintiffs thereupon brought this suit in a Subordinate Judge's Court to recover damages from the defendant for malicious prosecution. The jurisdiction of the Subordinate Judge to try the suit being questioned, he referred the case to the High Court. *Held* that the Subordinate Judge had jurisdiction to try the suit. The defendant was sued in his individual, and not in his official, capacity; and the fact that he was a Mamlatdar when he prosecuted the plaintiffs could not affect the character in which he was sued. BANKAT HARGOVIND *v.* NARAYAN VAMAN DEVBHANKAR . . I. L. R., 11 Bom., 370

31. ———————— *Malicious prosecution — Prosecution, when official — Bombay Civil Courts Act (XIV of 1869), s. 32—Bombay Act X of 1876, s. 15—Prosecution instituted by order of superior officer.*—An officer of Government who prosecutes for an injury personal to himself is not generally acting in his official capacity as prosecutor. If any particular class of interests is placed specifically under his tutelage, with a direction to guard them by the appropriate legal proceedings, suits instituted in the fulfilment of the duty thus assigned to the functionary are of course instituted in his official capacity. A similar remark applies to criminal proceedings. A prosecution by a functionary is official when in carrying it on he is discharging a duty expressly or impliedly assigned to him by law. If the duty of prosecuting in any particular case is not assigned to an officer as such, the consent or the order of his superior will not make the act an official one which in its nature is not so, as lying outside his official functions. The defendant was a forest officer in the service of Government. He prosecuted a certain person for theft in the Magistrate's Court at Sirsi. The accused was defended by the plaintiff, who was a pleader. During the hearing of the case the defendant in open Court made use of certain expressions towards the plaintiff, which it was alleged were defamatory, and were calculated to lower him in the estimation of the public, to injure his reputation, and to mar his professional prospects. The plaintiff sent him a notice claiming R4,500 as damages for the injury done to him by the defendant. The defendant thereupon lodged a complaint before the Divisional Magistrate at Sirsi, charging the plaintiff, under s. 189 of the Penal Code, with holding out a threat, etc., to a public servant for the purpose of inducing him to refrain from doing his duty as such public servant. The Magistrate dismissed the charge, and the plaintiff then filed the present suit against the defendant for malicious prosecution. The defendant

SUBORDINATE JUDGE, JURISDICTION OF—*continued*

pleaded that in lodging the complaint against the defendant he had acted in his official capacity and under the orders of his superior officer with reasonable and probable cause and not maliciously, that the suit was brought with reference to an act done by him in his official capacity as forest officer, and that therefore the Court of the Subordinate Judge had no jurisdiction The Subordinate Judge held that he had no jurisdiction, being of opinion that the defendant had prosecuted the plaintiff in his character as a public servant, and that therefore the present suit against the defendant was one in which an officer of Government in his official capacity was a defendant, and as such was cognizable by the District Judge only, under s 32 of the Bombay Civil Courts Act (XIV of 1869) He therefore dismissed the suit On appeal, the Acting District Judge was also of opinion that the Subordinate Judge had no jurisdiction, but he held that the Subordinate Judge was wrong in dismissing the suit instead of returning the plaint for presentation to the District Court He therefore reversed the decree of the Subordinate Judge and referred the plaintiff to the District Judge On appeal by the plaintiff,—*Held* by the High Court that the defendant was sued as a private person for an alleged wrong to the plaintiff, and that the suit was rightly brought in the Court of the Subordinate Judge The order appealed from was therefore reversed and the District Judge was directed to dispose of the appeal on its merits GOPI MAHABLESVAR BHAT *v* SHESO MANJU

[I. L R, 12 Bom, 358

32 ———————— *Suit against Collector—Act done in official capacity—Bombay Revenue Jurisdiction Act (X of 1876), s 15*—The plaintiff sued the Collector of Dharwar and his clutnis for having destroyed certain certificates of efficiency which had been given to him by Mamlatdars in whose service he had been employed The defendants pleaded that the certificates had been destroyed because they were not issued by the Mamlatdars in proper form *Held* that the act of the defendants was an act done by them in their official capacity, and that the Subordinate Judge could not entertain the suit SWAMIRAYACHARYA *v* COLLECTOR OF DHARWAR I L R., 15 Bom, 441

33 ———————— *Bombay Civil Courts Act (XIV of 1869), s 32, as amended by the Bombay Revenue Jurisdiction Act (X of 1876) s. 15, and by Bom Act XV of 1880, s 3—Bom Reg II of 1827, s 43—Suit against officer of Government—Acts done by the defendant in his official capacity—Civil Procedure Code (1882) s 421*—On the death of the talukhdar of

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property of the deceased, and locked up some of the rooms Among the property seized (it was alleged) was certain property belonging to the widow She brought this suit against the Collector and Mamlatdar claiming damages for these wrongful acts.

SUBORDINATE JUDGE, JURISDICTION OF—*continued*

The suit was filed in the Court of the Subordinate Judge *Held* that the acts complained of were done by the defendants in their official capacity, and that under s 32 of the Bombay Civil Courts Act (XIV of 1869) the Subordinate Judge had no jurisdiction to entertain the suit ALLEN *v* BAI SHRI DARIABA

[I L R., 21 Bom, 754

34 ———————— *Patil and kulkarni of village—Impressment of bullocks by patil and kulkarni of village for use of Government officer—Suit for damages for acts done by officer of Government in official capacity—Bombay Revenue Jurisdiction Act (X of 1876) s 15—Bombay Civil Courts Act (XIV of 1869) s 32—Bom Reg IV of 1818 s 52*—The patil and kulkarni of a village having impressed a pair of bullocks belonging to the plaintiff for the use of an abkari inspector the plaintiff sued them for damages in the Court of a Subordinate Judge The defendants pleaded (*inter alia*) that the Subordinate Judge had no jurisdiction to try the suit under the Bombay Revenue Jurisdiction Act (X of 1876) *Held* that the suit was properly instituted in the Court of the Subordinate Judge as the defendants were sued in their private capacity It is not clear that the rules about impressment of carts found in Ch I of Nairne's Revenue Hand book actually order village patils to impress carts against the owner's will neither it is clear what officers are to be supplied There is nothing to show that any law ever imposed this duty on a kulkarni, or that provision was made after the repeal of the Regulation of 1818 as regards patils except for military bodies BUDHO *v* KESO

[I L R, 21 Bom, 773

35. *Money lent to public officer—Money lent to him in his official capacity—Bombay Civil Courts Act (XIV of 1869), s 32*—The plaintiff had contracted to supply materials requisite for a public building The defendant was the Supervisor Public Works Department in charge of the works From time

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purpose of the work of which he may be in charge, or any way to pledge the credit of Government the mere statement of the defendant when he borrowed the moneys that he wanted them to pay the labourers was not under the circumstances enough to show that the defendant borrowed them in his official capacity, and that the Subordinate Judge had authority to entertain the suit in respect of them In claims arising out of contract the same test must be applied to determine the question of jurisdiction as in those having their origin in tort viz, was the loan

SUBSISTENCE MONEY—*continued*

5. ———— Right of debtor to discharge —*Omission to make order for allowance Civil Procedure Code, 1859, ss 276, 278* —A debtor, having been imprisoned on a writ of *ca sa*, was brought up on a *habeas corpus*, and applied for his discharge on the ground that his arrest and imprisonment were illegal, as no order for his allowance under s 276 of Act VIII of 1859 had been made Sufficient subsistence money, however, was paid to the Sheriff previous to the arrest, and he was kept amply supplied with it *Held* that ss 276 and 278 of Act VIII of 1859 applied as much to the execution of a mofussil decree as to an arrest by writ of the High Court, that no one is to be imprisoned in execution of a decree unless subsistence money for a month in advance be paid to the person to whose custody he is committed, that a similar payment must be received in advance every successive month pending the imprisonment, that if any such payment be not made, the prisoner is entitled to be released, that the "allowance" referred to in s 276 of Act VIII of 1859 meant subsistence money of 4 annas per diem, that s 276 of Act VIII of 1859 enacted only that the prisoner shall have an allowance of 4 annas per diem paid monthly unless the Court shall specially fix a less amount, that an order for an allowance to the prisoner was not necessary, and was intended only as a relief to the execution creditor, that the omission to have such order made did not render the arrest and imprisonment illegal, that in the absence of such order, s 278 of Act VIII of 1859 ensured 4 annas a day as subsistence money for the prisoner AGA ALI KHAN v JOYDOYAL PERSAUD

[Bourke, O. C, 52

6. ———— *Non-payment of subsistence-money in advance—Civil Procedure Code, 1859, s 276* —The monthly subsistence money under s 276 of Act VIII of 1859 must be paid in advance, therefore, where a debtor was arrested and subsistence-money paid for January, but no further deposit was made till 4th February, the prisoner was held entitled to his discharge IN RE KONOY LOLL DOSS . . Bourke, O C, 51

7. ———— *Application for discharge on non payment of subsistence money—Petition for discharge—Civil Procedure Code, 1859, s. 278* —A prisoner was arrested on the 30th of December on a *ca sa* dated the 24th of December, on which day the execution-creditor paid subsistence

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cular form of petition of discharge was required from a prisoner applying for his discharge for non-payment of subsistence-money, that subsistence-money must be paid in advance by the execution creditor

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Act VIII of 1859; and that on failure of subsistence-money the prisoner should be released, and further

SUBSISTENCE MONEY—*concluded.*

detention of him by the person in whose custody he is was illegal. SPEYER v JANSSEN

[Bourke, O. C., 28

8. ———— *Non-payment of subsistence money in advance—Act VIII of 1859, ss 276, 278.*—A prisoner was arrested on August 4th, and committed to prison on the evening of the same day Before his committal, the execution creditor paid into the hands of the Jailor a sum sufficient for his subsistence money for twenty-seven days, at the established rate of 4 annas per day On the 5th August a writ of *habeas corpus* was applied for to bring the prisoner up, and on the 6th a further sum of 4 annas was paid to the Jailor to cover any deficiency in the former payment *Held* that the requirements of s 276, Act VIII of 1859, had not been fulfilled and that the prisoner was entitled to his discharge under s 278 DUTT v CORNELIUS

[5 B L. R., Ap, 79

9 ———— *Mode of payment of subsistence money* —On the 30th of September, the plaintiff, a detaining creditor paid to the Jailor of the Calcutta Jail subsistence money for thirty days, for a prisoner confined at the suit of the plaintiff, the Jailor then having a balance of 4 annas over from the subsistence money for September *Held* that there was a sufficient compliance with s 276 of Act VIII of 1859 HALADHAR DEY v AMBIKA CHARAN BOSE . 5 B L. R., Ap., 8

10. ———— Refund of subsistence-money — *Release at request of creditor—Bom Act IV of 1865* Where the defendants were arrested through the Munsif's Court in execution of a decree, but were released at the request of the execution creditor before they had been sent to the civil jail, it was held that the execution creditor was entitled to a refund of the balance of subsistence money advanced by him that remained in the Munsif's hands at the time of his debtor's release. S 10 of Act IV of 1865 (Bombay) was not applicable to such a case EX PARTE KASHINATH BALAL OK

[5 Bom., A. C, 84

11. ———— Effect of discharge of debtor — *Non payment of subsistence money — Future arrest in execution of same decree, Effect of discharge on.*—The discharge of a defendant from confinement in jail in consequence of the plaintiff's failure to pay subsistence money at the rate fixed by the Court, bars a second arrest and imprisonment in execution of the decree APPIAH CHETTY v CHENGADOO . 4 Mad., 76

SUBSTANTIAL INJURY.

See CASES UNDER SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY

SUBSTANTIAL QUESTION OF LAW.

See APPEAL TO PRIVY COUNCIL—CASES IN WHICH AN APPEAL LIES OR NOT—SUBSTANTIAL QUESTION OF LAW.

See QUESTION OF LAW.

SUCCESSION.

See CASES UNDER CONVERTS.

See ENGLISH LAW—PRIMOGENITURE.
[5 Bom., O. C., 172

See CASES UNDER HINDU LAW—INHERITANCE.

See MAHOMEDAN LAW—DEBTS.
[I. L. R., 4 Calc., 142
I. L. R., 4 All., 361
I. L. R., 7 All., 822

See CASES UNDER MAHOMEDAN LAW—INHERITANCE.

See CASES UNDER MALABAR LAW—INHERITANCE.

See MARRIAGE SETTLEMENT.
[1 Ind. Jur., N. S., 290

See PARSIS . I. L. R., 1 Bom., 506
[I. L. R., 2 Bom., 75
I. L. R., 4 Bom., 537
I. L. R., 11 Bom., 1
I. L. R., 5 Bom., 506
I. L. R., 6 Bom., 151
I. L. R., 22 Bom., 355, 909

See PRIVY COUNCIL, PRACTICE OF—REVIVOR OF APPEAL.
[I. L. R., 21 Calc., 997
L. R., 21 I. A., 163

See SALSETTE, LAW APPLICABLE IN.
[I. L. R., 19 Bom., 680

——— Deed altering course of, by Hindu law.

See COMPROMISE—CONSTRUCTION, ENFORCING, EFFECT OF, AND SETTING ASIDE DEEDS OF COMPROMISE.
[6 B. L. R., 202
13 Moore's I. A., 497

——— to permanent tenure.

See BENGAL TENANCY ACT, s. 16.
[I. L. R., 24 Calc., 241

——— to raj.

See CASES UNDER HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION.

See HINDU LAW — INHERITANCE — IMPARTIBLE PROPERTY.

See JUDGMENT IN REM.
[11 B. L. R., 244
14 Moore's I. A., 367

——— to talukhdari.

See CASES UNDER OUDH ESTATES ACT, 1869.

SUCCESSION ACT (X OF 1865).

See CONVERTS . I. L. R., 10 Mad., 69
[I. L. R., 20 Bom., 53

——— ss. 2 and 3—*Minor*.—The definitions of "minor" and "minority" in the Succession Act do not apply to cases in which a person enters into a contract on his own behalf, and not in any representative character under that Act. SULTAN CHAND *v.* SMYTH . 12 B. L. R., 358: 21 W. R., 221

SUCCESSION ACT (X OF 1865)—*continued*.

——— s. 4.

See DIVORCE ACT, s. 35.
[5 B. L. R., Ap., 9
I. L. R., 5 Calc., 357
I. L. R., 9 Mad., 12

See HUSBAND AND WIFE.
[8 B. L. R., 372
I. L. R., 1 Calc., 285

1. ——— *Operation of section—Rights acquired before passing of Act.*—The provisions of s. 4 of the Succession Act are prospective, and leave rights unaffected which had already been acquired before the Act passed. SARKIES *v.* PROSONOMOYEE DOSSEE
[I. L. R., 6 Calc., 794: 8 C. L. R., 76

2. ——— *Married woman, Liability of—Separate estate—Restraint on anticipation—Husband and wife—Married Women's Property Act (III of 1874), s. 8.*—In a suit against a husband and wife, and the trustees of the wife's marriage settlement on two joint and several promissory notes given by the husband and wife after their marriage, but before the passing of the Married Women's Property Act (III of 1874), the plaintiff sought to render liable property settled on the marriage upon the wife for her separate use without power of anticipation. The marriage was contracted after the passing of the Succession Act. *Held* that s. 4 of that Act did not prevent the operation of the clause in the marriage settlement in restraint of anticipation. *Held* further that s. 8 of the Married Women's Property Act, 1874, does not apply to contracts made before the passing of the Act. *Semble, per* COUCH, *C.J.*—If the contract had been made after that Act came into operation, the plaintiff would have had a remedy against the wife's separate estate, notwithstanding the clause restraining anticipation. PETERS *v.* MANUK . 13 B. L. R., 383: 22 W. R., 175

3. ——— and s. 44—*Husband and wife—Parties with English domicile married in India—Succession to moveable property.*—*H M*, a British subject having his domicile in England, married in Calcutta, in April 1866. *C*, a widow, who at the time of the marriage had also an English domicile. *C*, after her marriage with *H M*, became entitled as next of kin to shares in the moveable properties of her two sons by her former marriage: these shares were not realized nor reduced into possession by *C* during her life *C* died in 1872, leaving her husband, but no lineal descendants. In March 1874 *H M* filed his petition in the Insolvent Court, and all his property vested in the Official Assignee. In April 1875 letters of administration of the estate and effects of *C* were, with the consent of *H M*, granted to the Administrator-General of Bengal, by whom the shares to which *C* became entitled as next of kin of her sons were realized. In a special case for the opinion of the Court under Ch. VII, Act

SUCCESSION ACT (X OF 1865)
—*continued.*

estate of *H M*, was entitled to the whole fund realized by such shares in the hands of the Adminis

[I. L. R., 1 Calc, 412

4 ——— — —*Marriage — Husband and wife—Domicile Succession to property*—A person with an English domicile marrying a wife with an Indian domicile is, on her death, entitled to inherit the whole of her moveable property to the exclusion of the next of kin Ss 4 and 44

the married persons, and not comprised in an ante nuptial settlement HILL *v* ADMINISTRATOR GENERAL OF BENGAL . I. L R, 23 Calc, 506

——— s. 5.

See FOREIGN STATE
[I L. R., 11 Calc., 17

— and s. 10.

See DOMICILE I. L. R, 4 Calc, 106

——— s 35

See CONVERTS I. L. R., 9 Mad., 466

——— s 42.

See PARSIS I L R., 2 Bom, 75

——— ss 48, 54.

See WILL—VALIDITY OF WILL
[I. L R, 7 Mad, 515

——— s. 50.

See CASES UNDER WILL—ATTESTATION

See CASES UNDER WILL—SIGNATURE

——— s 54

See WILL - CONSTRUCTION
[I. L R., 4 Mad, 244

——— s 56—*Revocation of will—Lawful polygamous marriage*—The will of a Jew, made subsequently to his first marriage, but previously to a second marriage in the lifetime of his first wife, held to be revoked by such second marriage under s 56 of the Succession Act. GABRIEL *v*. MORDAKAI
[I. L. R., 1 Calc, 148

——— s. 58

See WILL—ATTESTATION
[1 C. W. N., 428

——— s. 68

See WILL—CONSTRUCTION.
[I. L. R., 15 Mad., 448

SUCCESSION ACT (X OF 1865)
—*continued.*

——— s. 75

See WILL—CONSTRUCTION
[I. L. R., 6 All, 583

——— s. 82

See HINDU LAW—WILL—CONSTRUCTION OF WILLS — ESTATES ABSOLUTE OR LIMITED I L R., 24 Calc, 646
[I L. R, 22 Bom., 833

s 91.

See WILL—CONSTRUCTION
[I. L R., 6 All, 583

——— s 96—*Hindu Wills Act (XXI of 1870), ss 2, 3—Lapsed legacy—Lapse of gift to testator's lineal descendant—Probate and Administration Act (V of 1881) s 131*—A testator, by his will, dated the 22nd April 1878, gave a legacy of R5 000 to his son's daughter *J*, to be paid to her out of a certain sum owing to the testator by the Rajah of Bettia The testator died on the 2nd February 1881, and *J* in October 1879, the money due by the Rajah of Bettia was realized on the 7th December 1884 *J* left an only child *B*, who was born before the death of the testator *B* sued to recover the legacy left to her mother, the defence was that the legacy had lapsed *Held* that *J* was, in point of law, within the meaning of s. 96 of the Succession Act, a person in existence at the death of the testator, because a lineal descendant of her's survived the testator JITU LAL MAHATA *v* BINDA BIBI I. L. R., 16 Calc, 549

——— s. 98.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.
[I. L. R, 8 Calc, 157, 637
I. L R., 15 Bom, 326, 652
I. L. R., 16 Bom., 492

See WILL—CONSTRUCTION
[I. L. R, 4 Calc, 670

——— — *Application of section*—*Vested interests*—*Semble*—S 98 of the Succession Act applies only to vested interests. MASRYK *v* FERGUSSON . I L. R., 4 Calc, 304

— ss. 98—103.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.

——— s. 101.

See PERPETUITIES, RULE AGAINST
[I L. R., 20 Bom., 511

——— ss 101, 102.

See WILL—CONSTRUCTION
[I. L. R, 4 Calc., 304

——— s 105.

See WILL CONSTRUCTION
[I. L. R., 15 Mad., 448

SUCCESSION ACT (X OF 1865)
—*continued.*

——— s. 106.

See WILL—CONSTRUCTION.
[I. L. R., 6 All., 583

——— s. 111.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—SURVIVORSHIP.
[I. L. R., 23 Calc., 563
L. R., 23 I. A., 18

See WILL—CONSTRUCTION.
[3 C. W. N., 478

s. 114.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—BEQUEST FOR IMMORAL CONSIDERATION . I. L. R., 23 Mad., 613

——— s. 125.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—ESTATES ABSOLUTE OR LIMITED . I. L. R., 24 Calc., 406

See WILL—CONSTRUCTION.
[I. L. R., 22 Bom., 774

——— s. 128—*Legacy to person appointed executor—Rebuttal of presumption—Parol evidence—Hindu Wills Act (XXI of 1870), s. 2.*—The language of s. 128 of the Succession Act is peremptory and leaves no room for a presumption, and it is not left to the Court to decide whether the legacy is given to the person in his character as executor or not. The rule as to the admissibility of parol evidence to rebut the presumption, which may possibly upon the decisions obtain in England, has no force in this country where such evidence is inadmissible. PROSONO COOMAR GHOSE *v.* ADMINISTRATOR-GENERAL OF BENGAL . . . I. L. R., 15 Calc., 83

——— s. 159.

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—PERPETUITIES, TRUSTS, BEQUESTS TO A CLASS, AND REMOTENESS.
[I. L. R., 20 Bom., 450

See WILL—CONSTRUCTION.
[I. L. R., 15 Mad., 448

——— s. 179.

See PARTIES—PARTIES TO SUITS—EXECUTORS . I. L. R., 12 Bom., 621

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.
[I. L. R., 6 Bom., 460

——— ss. 179—187.

See CASES UNDER PROBATE—EFFECT OF PROBATE.

SUCCESSION ACT (X OF 1865)
—*continued.*

——— s. 182.

See PROBATE—TO WHOM GRANTED.
[7 B. L. R., 563
I. L. R., 15 Mad., 380

——— s. 187.

See CERTIFICATE OF ADMINISTRATION—EFFECT OF CERTIFICATE.
[23 W. R., 252

See PROBATE—JURISDICTION IN PROBATE CASES . I. L. R., 14 Calc., 37

See REPRESENTATIVE OF DECEASED PERSON . I. L. R., 14 Mad., 454

See VENDOR AND PURCHASER—TITLE.
[I. L. R., 15 Bom., 657

——— ss. 187, 188.

See PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT.
[I. L. R., 4 Calc., 360
I. L. R., 17 Calc., 272

——— s. 190.

See RIGHT OF SUIT—INTESTACY.
[I. L. R., 18 Bom., 337

——— ss. 190, 191—*Intestate—Sale of property of intestate in execution of decree against some of his heirs—Title to sale-proceeds—Letters of administration.*—*S* sued some of the heirs to a person governed by the Succession Act, 1865, who died intestate, such heirs being in possession of a part of the estate of the deceased, for a debt due to him by the deceased, and obtained a decree against such persons. In execution of this decree, property belonging to the deceased was sold. Before the sale-proceeds were paid to *S*, *R*, an heir to the deceased, obtained in the District Court letters of administration to the estate of the deceased, and an order for payment to her of such sale-proceeds. Thereupon *S* sued *R* for such sale-proceeds and to have the District Court's order directing payment thereof to her set aside. *Held* that, with reference to ss. 190 and 191 of the Succession Act, 1865, the decree obtained by *S* against persons who did not legally represent the estate of the deceased, and the proceedings taken against such persons in execution of such decree, gave S no title to the sale-proceeds which formed part of the estate of the deceased, and the suit was therefore not maintainable. SUKH NANDAN *v.* RENNICK . . . I. L. R., 4 All., 193

——— ss. 190—213.

See CASES UNDER LETTERS OF ADMINISTRATION.

——— s. 224.

See ILLEGITIMACY . 11 B. L. R., Ap., 6

——— s. 232.

See PROBATE—AMENDMENT OF ERROR IN PROBATE . I. L. R., 4 Calc., 582

SUCCESSION ACT (X OF 1865)
—*continued.*

——— ss. 234–261.

See CASES UNDER PROBATE—OPPOSITION TO, AND REVOCATION OF, GRANT

——— s. 235.

See JUDICIAL COMMISSIONER, ASSAM
[12 W. R., 424

——— s 237—*Exemplification of will—Probate—Order to produce testamentary paper*—The testator died in Calcutta, leaving a will, whereof he appointed *A*, *B*, *C*, and *D* executors *D*, the mother of the testator, had carried on business in partnership with the testator in Calcutta, and a considerable portion of the testator's estate was in India *A* renounced probate, and the will was proved in England by *B* and *C*, who sent their agents in Calcutta an exemplification of the will for the purpose of obtaining a grant of probate or letters of administration to the estate in India. In an applica-

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was an instrument which the Court would order to be produced under s. 237, Succession Act IN RE THE GOODS OF NEWTON 8 B. L. R., Ap, 76

——— s. 239.

See RECEIVER I. L. R., 17 Bom., 388

——— s. 240.

See LETTERS OF ADMINISTRATION
[I. L. R., 17 Bom., 689

——— s. 242.

See PROBATE—EFFECT OF PROBATE
[8 B. L. R., 208

——— s. 244.

See PROBATE—JURISDICTION IN PROBATE CASES . 4 C L. R., 498

——— s. 255.

See EXECUTOR I. L. R., 21 Bom., 400

——— s. 256.

See PROBATE—ADMINISTRATION BONDS
[I. L. R., 7 Calc., 84
3 Mad., Ap, 10
4 C. L. R., 498
I. L. R., 26 Calc, 407

——— ss. 256, 257.

See ADMINISTRATION BOND 6 N. W., 63
[I. L. R., 10 All., 29

s. 257.

See ACT XL OF 1858, s 21
[I. L. R., 5 All., 248

See GUARDIAN—LIABILITY OF GUARDIANS.
[I. L. R., 5 All., 248

SUCCESSION ACT (X OF 1865)
—*continued.*

——— s 258—*Grant of letters of administration with will annexed—Practice*—Letters of administration with the will annexed may under s. 258 of the Succession Act, be granted after the expiration of seven clear days from the death of the testator IN THE GOODS OF WILLSON
[I. L. R., 1 Calc, 149

——— s. 261.

See PROBATE—APPLICATION FOR PROBATE, ETC I. L. R., 19 Mad., 458

——— s. 263

See APPEAL—CERTIFICATE OF ADMINISTRATION . I. L. R., 20 Calc., 245

See APPEAL—PROBATE
[I. L. R., 27 Calc, 5

——— s. 264.

See REFERENCE TO HIGH COURT—CIVIL CASES . I. L. R., 5 Calc., 756

——— s. 235.

See APPEAL—PROBATE 2 C L. R., 589

——— s. 268

See RIGHT OF SUIT—INTESTACY
[I. L. R., 18 Bom., 337

——— s. 269

See EXECUTOR I. L. R, 1 All., 710

See LETTERS OF ADMINISTRATION.
[I. L. R, 23 Calc., 579

s. 280.

See ADMINISTRATOR.
[I. L. R, 17 Bom., 637

——— s. 282

See ADMINISTRATOR 8 Bom., O. C, 20

See ADMINISTRATOR-GENERAL'S ACT
[I. L. R., 25 Calc., 54

1. ——— *Decree, Satisfaction of—Executor—Administrator*—Where a person obtains a decree against an executor or administrator, he is entitled to have his decree satisfied out of the assets of the deceased, and s. 282 of the Succession Act does not interfere with that right NILKOMUL SHAW *v.* REED
[12 B. L. R., 287 : 17 W. R., 513

2. ——— *Debt—Liability to pay calls on shares in company*—A liability to pay calls is a debt within the meaning of s. 282 of the Succession Act. ASIATIC BANKING COMPANY *v.* VIEGAS . . . 8 Bom., O. C., 20

3. ——— *Judgment creditor—Execution of decree—Right to assets in hands of Administrator-General—Administrator-General's Act (II of 1874), s. 35*—A decree for money was obtained against a person who afterwards died intestate. Letters of administration to his estate

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were granted to the Administrator-General of Bengal. The decree-holder applied for execution of his decree against the assets in the hands of the Administrator-General. *Held* that he was entitled to have his decree satisfied out of the assets of the deceased, although those assets were not sufficient to pay in full all the claims made against the estate. REMFRY *v.* DE PENNING . . **I. L. R., 10 Calc., 929**

———— **s. 328.**

See ADMINISTRATOR **8 Bom., O. C., 20**

———— **s. 331.**

See PROBATE—POWER OF HIGH COURT TO GRANT, AND FORM OF.
[I. L. R., 6 Bom., 452

See WILL—FORM OF WILL.
[2 B. L. R., A. C., 79

1. ———— *Jains—"Hindu."*—The term "Hindu" in s. 331 of Act X of 1865 means and includes a "Jain," and consequently in matters of succession, Jains are not governed by that Act. BACHERBI *v.* MAKHAN LAL . **I. L. R., 3 All., 55**

2. ———— *Native Christians—Hindu law—Inheritance.*—The Succession Act governs the succession in Native Christian families; and since the passing of that Act such families have not been at liberty to adhere to the Hindu law of succession. *Held* that, if the family continued to observe the Hindu law of succession until the Succession Act altered their rule of succession, the members of the family who were born before the latter Act came into operation could not be deprived of the rights acquired by them under the Hindu law. PONNUSAMI NADAN *v.* DORASAMI AYYAN
[I. L. R., 2 Mad., 209

3. ———— *Native Christian—Application under Act XXVII of 1860 for certificate of administration.*—Petitioner, a Native Christian, applied under Act XXVII of 1860 for a certificate of heirship to his deceased grandfather. The Civil Judge refused it on the ground that Native Christians are not "Hindus" within the meaning of the term as used in s. 331 of the Succession Act (X of 1865), and therefore that they are affected by the provisions of that Act, and cannot proceed under Act XXVII of 1860. *Held* upon appeal that the order of the Civil Judge was right. IN THE MATTER OF THE PETITION OF VATHIAR . . **7 Mad., 121**

4. ———— and s. 2—*Converts to Christianity from Hinduism—Inheritance—Evidence of custom of inheritance—Koli caste of fishermen.*—The Indian Succession Act (X of 1865), and the rules of inheritance prescribed by it, apply to Hindus who have become Christians; and evidence to show that they and the community to which they belong have retained the Hindu custom of inheritance, is inadmissible. DAGREE *v.* PACOTTI SAN JAO . . . . **I. L. R., 19 Bom., 783**

SUCCESSION CERTIFICATE ACT (VII OF 1889).

See CASES UNDER APPEAL—CERTIFICATE OF ADMINISTRATION, ETC.

See BOMBAY CIVIL COURTS ACT, s. 16.
[I. L. R., 16 Bom., 277

See CASES UNDER CERTIFICATE OF ADMINISTRATION.

———— **Village Courts Act (Mad. Act I of 1889).**—The provisions of the Succession Certificate Act apply to suits in a Village Munsif's Court. RASIBI AMMAL *v.* OLAGA PADAYACHI
[I. L. R., 21 Mad., 115

———— **s. 4.**

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—GENERALLY.
[I. L. R., 20 Calc., 755
I. L. R., 20 Bom., 76

See PARTIES—PARTIES TO SUITS—PARTNERSHIP, SUITS CONCERNING.
[I. L. R., 18 Calc., 86

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 16 Mad., 454

———— **s. 9.**

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s. 622.
[I. L. R., 19 Bom., 790

———— **s. 17.**

See COURT FEES ACT, 1870, s. 26.
[I. L. R., 19 Bom., 145

———— **s. 19.**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 17 Mad., 167

———— **s. 26.**

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL.
[I. L. R., 17 Mad., 167

See SUBORDINATE JUDGE, JURISDICTION OF . . **I. L. R., 17 Bom., 230**

SUDDER COURT.

———— **Meaning of term**—*Act VIII of 1842—Criminal Procedure Code, 1861, s. 19.*—Meaning of the term "Sudder Court" as defined by Act VIII of 1842 and by s. 19 of the Criminal Procedure Code. REG. *v.* VYANKATASVAMI
[2 Bom., 2nd Ed., 106

"SUDDER KHAJANA."

———— **Meaning of term.**—The words "sudder khajana" do not necessarily mean a rental payable to Government, but may mean a rental payable to the zamindar. KALEE TARA DEBIA *v.* NITTIANUND SHAHA . . . . . . **12 W. R., 90**

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See Cases under Hindu Law—Adoption—Requisites for Adoption—Ceremonies

See Hindu Law—Adoption—Who may or may not be adopted
[I. L. R. 1 Mad., 62
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See Cases under Hindu Law—Inheritance—Illegitimate Children

See Hindu Law—Inheritance—Joint Property and Survivorship
[I. L. R., 4 Bom., 37
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[13 Moore's I. A., 141
2 B. L. R., P. C., 15
5 Mad., 405
I. L. R., 8 Mad., 325, 557
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See Hindu Law—Marriage—Validity or otherwise of Marriage
[3 B. L. R., P. C., 1
13 Moore's I. A., 141
I. L. R., 1 Calc., 1
I. L. R., 15 Calc., 708

See Hindu Law—Partition—Right to Partition—Illegitimate Children
[I. L. R., 12 Mad., 401

SUICIDE

See Abetment . 1 Agra, Cr., 21
[3 N. W., 316

See English Law—Suicide
[1 W. R., P. C., 14: 9 Moore's I. A., 387

——— **Attempt to commit suicide**—

Penal Code s 309—Intention—Locus pœnitentiæ—*R*, with the intention of committing suicide by throwing herself into a well ran to the well where she was arrested. She was convicted under s. 309 of the Penal Code of having attempted to commit suicide. *Held* that the conviction was illegal. Queen Empress *v.* Ramakka I. L. R., 8 Mad., 5

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See Bengal Rent Act, 1869 s. 101
[6 B. L. R., 569

See Bengal Rent Act, 1869 s. 102.
[19 W. R., 307
23 W. R., 207

SUIT—*continued*

See Broach Encumbered Estates Act, s. 19 . I. L. R., 5 Bom., 448

See Court Fees Act 1870, s. 11
[I. L. R., 24 Calc., 173

See Court of Wards Act, 1879 s. 20
[I. L. R., 18 Calc., 500

See Execution of Decree—Application for Execution and Power of Court I. L. R., 18 Calc., 635
[I. L. R., 12 All. 392

See Limitation Act 1877 s. 14 (1871, s. 15) 3 Agra, 39
[I. L. R., 1 All., 97

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[I. L. R., 22 Calc., 943

See Limitation Act 1877 art. 179 (1871, art. 167)—Period from which Limitation runs—Where previous Application has been made
[I. L. R., 2 Calc., 336

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[I. L. R., 16 Bom., 731

See Res Judicata—Adjudications
[I. L. R., 3 Calc., 340

Abatement of—

See Abatement of Suit

——— **Change in form of**—

See Cases under Plaint—Amendment of Plaint

See Variance between Pleading and Proof

for declaration of right to officiate in hereditary office

See Cases under Jurisdiction of Civil Court—Offices Right to

See Cases under Right of Suit—Office or Emolument

——— **for land.**

See Cases under Jurisdiction—Suits for Land

——— **for money charged on immoveable property.**

See Cases under Limitation Act, 1877, art. 132

See Cases under Mortgage—Sale of Mortgaged Property—Money decrees on Mortgages

——— **for share of fees**—

See Cases under Jurisdiction of Civil Court—Fees and Collections at Shrines

SUIT—*continued.*

See CASES UNDER RIGHT OF SUIT—OFFICE OR EMOLUMENT.

——— **for turn of worship of idol.**

See LIMITATION ACT, 1877, ART. 131.
[6 B. L. R., 352 : 15 W. R., 29
I. L. R., 4 Calc., 683
I. L. R., 8 Calc., 807 : 10 C. L. R., 439

——— **Institution of—**

See CASES UNDER LIMITATION ACT, 1877, s. 4.

——— **Restoration of—**

See CASES UNDER CIVIL PROCEDURE CODE, ss. 98, 99, and 100.

——— **Revival of—**

See ABATEMENT OF SUIT—SUITS.
[I. L. R., 5 Calc., 139

See CASES UNDER LIMITATION ACT, 1877, ARTS. 171, 171A, 171B.

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 6 Calc., 60
I. L. R., 8 Calc., 420
I. L. R., 5 Calc., 139
I. L. R., 5 Bom., 29

See PARTIES—SUBSTITUTION OF PARTIES.

1. ——— **Notice of revival.**—Before a suit can be revived, notice should be served upon the opposite party to appear in support of the decree as originally made. HURO MOHUN MOOKERJEE *v.* MOHENDRONATH GHOSE . . 16 W. R., 135

2. ——— **Right to revive suit**—*Act LIII of 1860, s. 2—Civil Procedure Code, 1859, s. 378.*—S. 2, Act LIII of 1860, referred to appeals and also to suits, and as the suit of the special appellant, which had been decreed in the Court of first instance, was dismissed by the lower Appellate Court, the special appellant was held entitled to a revival of his suit. S. 378, Act VIII of 1859, refers to applications for review of judgment, but this was an application for revival of the suit under s. 2, Act LIII of 1860. BUNGSHEEDUR MUNDUL *v.* PUDDO LOCHUN ROY W. R., F. B., 11
[1 Ind. Jur., O. S., 5 : Marsh., 38 : 1 Hay, 90

3. ——— **Revival of suit by successor of Judge**—*Ex-parte decree—Act X of 1859, s. 58.*—Where defendants against whom an *ex-parte* decree has been passed by a Collector applied to his successor under s. 58, Act X of 1859, for a revival of the suit, showing good and sufficient cause for their non-appearance, and that there had been a failure of justice, the successor was competent to alter or rescind his predecessor's decree according to the justice of the case. RUGHOO MOHINEE DOSSEE *v.* KASHEE NATH ROY CHOWDHRY. KASHEE NATH ROY CHOWDHRY *v.* SHABITREE SOONDUREE DOSSEE
[10 W. R., 156

4. ——— **Effect of revival**—*Act X of 1859, s. 58.*—The revival of a suit under s. 58, Act X of 1859, did not re-open the case as regards all the defendants, but only as regards the party who had applied to have his particular case revived and heard on the merits. BROJONATH SURMAH CHUCKERBUTTY *v.* ANUND MOYEE DEBIA CHOWDHRAIN
[7 W. R., 237

5. ——— **Form of order for revival**—*Abatement—Civil Procedure Code (Act XIV of 1882), ss. 365, 366, 371.*—The plaintiff died on the 28th August 1883, and in December 1884 letters of administration to his estate were granted to the Administrator-General. The defendant died in June 1884, leaving a widow and one son him surviving. By his will he appointed two executors. On the 3rd February 1885 the Administrator-General took out a summons to revive the suit. *Held* that, notwithstanding the provisions of s. 365 of the Civil Procedure Code (XIV of 1882) and of the Limitation Act XV of 1877, it was competent for a Judge in chambers to revive the suit by making an order for abatement under s. 366 of the Code, coupled with an order under s. 371 setting aside the order for abatement. FULVAHU *v.* GOCULDAS VALLABHDAS . . I. L. R., 9 Bom., 275

6. ——— **Mode of revival**—*Revival by Bill—Civil Procedure Code, 1877.*—There is nothing in the Civil Procedure Code to prevent a suit being revised as before it was passed by Bill, if the simpler mode of proceeding is for any reason not available. ATTERMONY DOSSEE *v.* HURRY DOSS DUTT
[I. L. R., 7 Calc., 74 : 9 C. L. R., 357

——— **Title of—**

See HIGH COURT, JURISDICTION OF—CALCUTTA—CIVIL.
[2 Ind. Jur., N. S., 245

See PRACTICE—CIVIL CASES—PARTIES.
[I. L. R., 22 Calc., 270

——— **Withdrawal of—**

See CASES UNDER WITHDRAWAL OF SUIT.

SUITS VALUATION ACT (VII OF 1887).

See CASES UNDER VALUATION OF SUITS.

——— **s. 8.**

See MUNSIF, JURISDICTION OF.
[I. L. R., 19 Mad., 56

——— **s. 11.**

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL.
[I. L. R., 18 Mad., 418

SUMMARY DECISION.

See CASES UNDER LIMITATION ACT, 1877, ART. 178 (1859, s. 22).

SUMMARY ORDER

——— Suit to set aside—

See CASES UNDER LIMITATION ACT, 1877, ART 13 (1871, ART. 15).

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See MAGISTRATE, JURISDICTION OF—GENERAL JURISDICTION
[I. L. R, 15 Mad, 83

See MAINTENANCE, ORDER OF CRIMINAL COURT AS TO
[I. L. R., 20 Calc, 351

See CASES UNDER NEGOTIABLE INSTRUMENTS, SUMMARY PROCEDURE ON

See PRACTICE—CIVIL CASES—LEAVE TO SUE OR DEFEND
[I. L. R., 3 Calc., 539

SUMMARY SUIT.

— Cross claim in—

See COMPENSATION—CIVIL CASES
[I. L. R., 18 Bom, 717

SUMMARY TRIAL

See CATTLE TRESPASS ACT, s 20
[I. L. R, 23 Calc, 248

See PRACTICE—CRIMINAL CASES—SIGNATURE OF MAGISTRATE
[I. L. R, 6 Mad., 396

1 ——— Requisites for legal conviction—*Criminal Procedure Code, 1872, ss 222 230—Procedure*—In summary cases under Ch XVIII, ss 222 230, of the Code of Criminal Procedure, 1872, the formalities provided by that chapter should be most strictly observed If they are not, a conviction will be set aside QUEEN v JOHRIE SINGH . . . 22 W R., Cr, 28

2 ——— *Criminal Procedure Code, 1872, s. 222—Procedure.*—In a case tried under the summary procedure authorized by s. 222 of the Criminal Procedure Code, 1872, it must appear clearly on the face of the conviction that the case was dealt with as one of those which come under the purview of that section If the case be one of theft, it should appear what the value of the property alleged to have been stolen really was QUEEN v. ABHEEN PARRIDA . 20 W. R., Cr, 17

3. ——— Test of summary trial—*Criminal Procedure Code, 1872, s 222—Care in recording proceedings and in decision*—Where the procedure is of a summary nature, the trial is summary, notwithstanding the length and carefulness of the record and decision. QUEEN v DOMA RAM
[24 W. R., Cr, 66

4. ——— *Test of summary case—Criminal Procedure Code, 1872, s. 222—Jurisdiction to try summarily*—It is the nature of the complaint which should determine whether a case should be

SUMMARY TRIAL—*continued*

tried summarily under s. 222 of the Code of Criminal Procedure Where the acts complained of amount to an offence which a Magistrate cannot try summarily, he is not competent to hold a summary trial *Dwarkanath Mazoomdar v. Nabe Das, 21 W R, 829,* and *Chunder Shekur Thakoor v Nitaloo, 2 W R, 29,* followed. IN THE MATTER OF BEPUTOOLLA v NAJIM SHEIKH
[2 C L. R., 374

5 ——— *Criminal Procedure Code, 1872, s 222—Criterion for testing*—Whether a case is triable summarily or not, must be determined by the complaint, not by an estimate formed by the Magistrate (*e g*, of the worth of the property which the accused is charged with having stolen) after evidence has been recorded and such estimate cannot restrospectively warrant a mode of trial which was originally illegal RAM CHUNDER CHATTERJEE v. KANYE LAHA 25 W. R., Cr, 19

6. ——— *Criminal Procedure Code, s 260—Complaint including charge not summarily triable—Summary jurisdiction not necessarily ousted thereby*—The mere circumstance of a complaint charging an accused person with offences not summarily triable along with other offences so triable would not necessarily oust the summary jurisdiction of a Magistrate under s. 260 of the Criminal Procedure Code Whether a complaint affords sufficient grounds for a summary trial or

[illegible]

each case *Ram Chunder Chatterjee v Kanye Laha, 25 W R, Cr, 19, Chunder Seekor Sookul v Dhurm Nath Tewaree, 1 C L R, 434, Beputoolla v Najim Sheikh, 2 C L R, 474,* and *Empress v Abdool Karim, I L R, 4 Calc, 18,* referred to QUEEN EMPRESS v JAGJIWAN
[I. L R., 10 All., 55

7. ——— *Value stolen in case of theft as determining jurisdiction to try summarily—Evidence, Mode of taking*—In a case in which the accused was charged with theft of a box containing R50 in cash and of the box worth 8 annas 6 pie, the Magistrate considered the box to be of no value, and struck out the 8 annas 6 pie, and thereupon tried the case summarily under s 222 of the

[illegible]

the same way as evidence upon the merits of the case, and as it was not taken, the Court held that the Magistrate had no jurisdiction in this case QUEEN v BUZLEH ALI . . . 23 W. R., Cr., 65

8. ——— Matters necessary to be stated in the record of a summary trial—*Criminal Procedure Code (1882), ss. 260, 263—Offence under Gambling Act (III of 1867), ss 3 and 4.*—Where a Magistrate invested with powers

SUMMARY TRIAL—*continued.*

under s. 260 of the Code of Criminal Procedure is trying a case summarily, it is desirable that he should set out under the column reserved for that purpose so much of the reasons that have influenced him as to satisfy the accused that the Magistrate has considered each of the ingredients necessary in law for the conviction to which the Magistrate has proceeded, and that, while this should be recorded with brevity, the brevity should not be such as to tend to obscurity. The record of a summary trial contained in the column corresponding to cl. (*h*) of s. 263 of the Code of Criminal Procedure the following entry: "The police made a raid on information received, and caught all the accused gambling. The defence of Mukundi, Mannu, Kali Charan, Ballau, and Gulzari Lal involves the absurdity that the police obtained a warrant to raid a house in which they could have no reason to suppose they would find any one. I convict Mukundi of keeping a common gaming-house—s. 4, Gambling Act. I convict the other six defendants of gaming in a common gaming-house—s. 3, Gambling Act." *Held* that this entry, though it should have been more explicit, was a sufficient compliance with the requirements of the law. QUEEN-EMPRESS *v.* MUKUNDI LAL

[I. L. R., 21 All., 189

9. ——— Case instituted by Magistrate—*Criminal Procedure Code, 1872, s. 222—Institution by Magistrate without complaint.*—Where an accused person had, at the instance of the Magistrate, who had come across him while out walking one morning, encroaching on an embankment, been placed on his defence for mischief, and summarily tried and sentenced to two months' rigorous imprisonment,—*Held* that, in a case of this kind, where Government had been made prosecutor, but no complaint had been offered to the Magistrate, who had acted on his own impulse, the Magistrate had erred seriously in dealing with the case summarily and sentencing of the accused to imprisonment. IN THE MATTER OF THE PETITION OF PRAN NATH SHAHA. IN THE MATTER OF THE PETITION OF ROMA NATH BANERJEE . 25 W. R., Cr., 69

10. ——— Criminal trespass and mischief—*Magistrate, Jurisdiction of—Code of Criminal Procedure (Act X of 1882), s. 260.*—A person may be tried summarily for criminal trespass and mischief unless there is a *bonâ fide* claim of right depriving the Magistrate of jurisdiction. *Shakur Mahomed* v. *Chunder Mohun Sha, 21 W. R., Cr., 38,* disapproved. *Issur Chunder Mundle* v. *Rohim Sheikh, 25 W. R., Cr., 65,* distinguished. GAMIRULLAH SARKAR *v.* ABDUL SHEIKH

[I. L. R., 10 Calc., 408

11. ——— Mischief combined with theft—*Criminal Procedure Code, 1872, s. 222.*—A charge of mischief, even if combined with one of theft, is triable summarily under Act X of 1872, s. 222. QUEEN *v.* RAMAOTAR PANRE

[25 W. R., Cr., 5

12. ——— Offence under Act XXI of 1856—*Criminal Procedure Code, 1872, s. 222 and s. 148.—Illegal possession of opium.*—On a conviction, under *Act XXI* of 1856, of having in possession opium not supplied from Government stores, the Magistrate tried the case summarily under s. 222, Code of Criminal Procedure, and passed a sentence of fine or imprisonment, and confiscation of the opium. *Held* that the case could not be tried summarily, the additional sentence of confiscation not coming under s. 148, Code of Criminal Procedure QUEEN *v.* JODOO NATH SHAHA . . . 23 W. R., Cr., 33

See IN THE MATTER OF THE PETITION OF KHETTER MOHUN CHOWRUNGHEE

[22 W. R., Cr., 43

13. ——— *Criminal Procedure Code, s. 260—Act XIII of 1859, s. 2.*—Offences under s. 2 of Act XIII of 1859 are triable summarily under s. 260 of the Criminal Procedure Code. QUEEN-EMPRESS *v.* INDARJIT

[I. L. R., 11 All., 262

14. ——— *Illegal possession of opium—Offence punishable by fine and confiscation.*—An offence under s. 49 of Act XXI of 1856 can be tried summarily under s. 222 of the Criminal Procedure Code, the confiscation provided by s. 49 being merely a consequence of the conviction, and not forming part of the punishment for the offence. EMPRESS *v.* BAIDANATH DASS

[I. L. R., 3 Calc., 366: 1 C. L. R., 442

15. ——— Criminal intimidation—*Criminal Procedure Code, 1872, s. 222.*—Where a head constable of police of many years' service was charged with criminal intimidation with a view to prevent a person from giving evidence against serious offenders, and the District Magistrate tried the case summarily under the special power given by s. 222 (10) of the Code of Criminal Procedure, 1872,—*Held* that the case ought not to have been tried summarily. SUBRAMANYA *v.* QUEEN

[I. L. R., 6 Mad., 396

16. ——— Offences one triable summarily and the other not—*Criminal Procedure Code, 1882, s. 260—Omission of charge so as to give summary jurisdiction.*—Where an accused is charged with offences one of which is triable summarily and the other not so triable, it is not open to a Magistrate to discard the latter charge and to proceed to try the case summarily. RAMANUND MAHTON *v.* KOYLASH MAHTON

[I. L. R., 11 Calc., 236

17. ——— Alteration of charge to make it triable summarily—*Criminal Procedure Code, 1872, ss. 222-230—Power of Magistrate.*—The powers conferred upon Magistrates under the 18th chapter of the Criminal Procedure Code, 1872, were not intended to give them the power of altering a charge brought against an accused person so as to bring his case within the provisions of that chapter; but when a charge of a serious offence—one which the Magistrate is not competent to inquire into summarily—is preferred, it is the plain duty of the Magistrate to apply the procedure prescribed for such cases, and either to convict or acquit, or commit for trial, the person implicated. The procedure under Ch. XVIII is to be followed when

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a charge is plainly and directly one of those specified in s. 222. CHUNDER SHEKHUR THAKOOR *v.* NITALOO [22 W. R., Cr., 29

HARAN SHEIKH *v* RAMDHUN BISWAS [24 W. R., Cr., 21

EMARAL SHEIKH *v* MOHAMMADI SHEIKH [24 W. R., Cr., 48

See EMPRESS *v* ABDOOL KARIM [I L R, 4 Calc., 18

attributed to them constitute, but in trying the case as one under s 143, Penal Code, for the purposes of holding the trial under summary procedure is highly improper. SHEO BHUNJUN SINGH *v* MOSAWI [4 C. W. N, 795

19. ——— *Alteration of charge of dacoity to one of unlawful assembly*—In a case where the charge was originally one of dacoity, but in the course of the proceedings that charge was ignored and the accused put on their defence on a charge of being members of an unlawful assembly, and the proceedings continued in a summary way,—*Held* that, the original charge being one of dacoity, the Magistrate had no jurisdiction to alter it and try the case summarily DWARKANATH MAZOOMDAR *v* LALU DASS . 21 W. R., 89

20 ——— *Rioting altered to charge of mischief*—Where a charge of rioting was tried summarily by the Magistrate as one of mischief and unlawful assembly, the Sessions Judge, relying on the case of *Chunder Shekhur Thakoor v Nitaloo, 22 W. R, Cr, 29,* submitted, at the request of the accused, that the summary order might be set

[23 W. R, Cr., 19

21. ——— Alteration of assault on public servant to one of assault—*Criminal*

trial could not be held The Sessions Judge, on the Magistrate's own judgment, recommended that the convictions should be set aside, on the grounds (1) that the facts showed that the accused should have been convicted under s. 353 or under s 342, and (2) that the Magistrate had no power to convict of the lesser offence, and so give himself jurisdiction to try the case summarily. *Held,* in concurrence with the Sessions Judge, that the accused ought to have been tried under s 353 the Magistrate's summary proceedings were accordingly set aside and a fresh trial directed. QUEEN *v* BANEE MADHUB DOSS . . . 23 W. R., Cr, 3

22 ——— Alteration of charge from lurking house trespass or house-breaking at night to receiving stolen property—*Magistrate, Jurisdiction of—Penal Code, ss 411, 457—Criminal Procedure Code, 1872, ss 141, 222—Alteration of charge from one offence to another*—A Magistrate, who is otherwise competent, has, under s 141 of Act X of 1872, a discretion to inquire into and try a person on any charge which he may consider covered by the facts complained of by any person, or reported by the police, without reference to the particular charge that may have been preferred by the complainant or by the police, and without reference to the procedure which, when he has determined the offence with which he will charge the accused, it will be competent to him to adopt *Held,* therefore, when a person was brought before a Magistrate by the police charged with an offence under s 457 of the Penal Code, an offence not triable in a summary way, that the Magistrate was competent to alter the charge to one under s 411, and to try the accused summarily under the provisions of s 223 of Act X of 1872 IN THE MATTER OF MEWA . . . . . 6 N W, 254

23 — Appeal from summary trial—*Insufficiency of evidence—Criminal Procedure Code, 1872, ss 222 to 230*—If on appeal from a summary trial under Ch XVIII of the Criminal

[11 B L R, 33

24. Magistrate, Power of to try case summarily—*Criminal Procedure Code (Act X of 1882), s 260*—A complainant applied to a Magistrate for process against certain persons under ss 447, 146, 148, and 149 of the Penal Code The Magistrate, having perused the petition of the complainant and examined him on oath, issued summonses against the persons named under those sections The complainant was not himself an eye-witness of the occurrence, and merely stated in his petition and evidence what he had been told by his

of the accused. It was contended that he had no power so to try and dispose of the case. *Held* that

enumerates sections of the Penal Code relating to offences not triable summarily does not affect the jurisdiction of the Magistrate, unless the facts of

SUMMARY TRIAL—*concluded.*

which he really complains disclose such offences. GOLAP PANDEY *v.* BODDAM [I. L. R., 16 Calc., 715

25. ——— *Criminal Procedure Code (Act V of 1898), s. 260—Summary procedure under Penal Code, s. 323, after enquiry into the graver charges under ss. 147 and 324 not triable summarily.*—A first class Magistrate took a case on his file and commenced a regular enquiry therein under ss. 147 and 324 of the Indian Penal Code; but after hearing evidence and being of opinion that only an offence under s. 323 of the Indian Penal Code had been made out, he proceeded to deal with the case summarily. *Held* that, inasmuch as the evidence adduced was not sufficient to justify a committal, but clearly disclosed an offence over which he had summary jurisdiction, the Magistrate was right in acting as he did. Such a course is different to disregarding part of a charge for the purpose of dealing with a case summarily. The High Court will not interfere where a Magistrate has *bonâ fide* acted in the interests of justice. *Empress* v. *Abdool Karim, I. L. R., 4 Calc., 18,* distinguished. QUEEN-EMPRESS *v.* RANGAMANI . . I. L. R., 22 Mad., 459

SUMMING UP EVIDENCE.

See ASSESSORS . 7 B. L. R., 63, 67 note [I. L. R., 9 Calc., 875 4 Mad., Ap., 39

See CASES UNDER CHARGE TO JURY.

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See INSPECTION OF DOCUMENTS—CRIMINAL CASES . I. L. R., 19 Calc., 52

See PRODUCTION OF DOCUMENTS. [W. R., 1864, 164

See CASES UNDER WITNESS—CIVIL CASES—SUMMONING AND ATTENDANCE OF WITNESSES.

See CASES UNDER WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

——— Application for—

See LIMITATION ACT, 1877, ART. 178. [I. L. R., 3 Calc., 312 I. L. R., 5 Calc., 126

——— in chambers.

See COMPANY—WINDING UP—LIABILITY OF OFFICERS . I. L. R., 19 Bom., 88

——— Issue of—

See PARDANASHIN WOMEN. [I. L. R., 21 Calc., 588

——— Leave to amend—

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY . I. L. R., 2 Bom., 91

SUMMONS—*continued.*

——— not served.

See PRINCIPAL AND SURETY—DISCHARGE OF SURETY . I. L. R., 14 Bom., 267

See WITHDRAWAL OF SUIT. [I. L. R., 15 Bom., 160

——— Refusal to grant receipt for—

See PENAL CODE, s. 173. [5 Bom., Cr., 34 I. L. R., 3 Calc., 621 I. L. R., 20 Calc., 358

——— to attend taxation.

See COSTS—TAXATION OF COSTS. [7 B. L. R., Ap., 50

See LIMITATION ACT, 1877, s. 4. [I. L. R., 20 Calc., 899

1. ——— Issue of summons—*Issue after period of limitation.*—A summons ought not to be ordered to issue after the lapse of the period of limitation prescribed for a suit, unless the plaintiff has, in the meantime, done what he can to prosecute his suit with proper diligence. If a defendant is aggrieved by an order directing a summons to issue in such a case, he ought to apply to set aside the order and the summons under it. GERENDER COOMAR DUTT *v.* JUGGADUMBA DABEE . I. L. R., 5 Calc., 126

2. ——— Issue of fresh summons—*Return of old summons.*—A fresh writ of summons will not be granted till the old one is returned into Court. ISSURCHUNDER SEIN *v.* AUSHOTOSH CHATTERJEE . . . 1 Ind. Jur., N. S., 283

3. ——— Application for fresh summons—*Practice.*—An application for a fresh summons to appear, etc., should be issued on petition showing that a fruitless endeavour had been made on the part of the plaintiff to serve the first summons, and that it was not by any default of his that he had failed. URQUHART *v.* GILBERT [1 Ind Jur., N. S., 224

4. ——— Grant of second summons—*Discretion of Judge—Practice—Rule 12 of High Court Rules, 1st May 1875—Laches.*—A Judge has, under rule 12 of the Rules of 1st May 1875, discretion as to granting a second summons, and is bound to inquire into the circumstances under which it is applied for; and when there has been great and unexplained laches, he should refuse it. Unless such discretion is clearly shown to have been improperly exercised, the Court will not interfere on appeal; but under the circumstances of this case, the Court on appeal, finding there was no definite rule of practice as to the time within which a second summons might be applied for, allowed a second summons to issue. GOURCHURN SOOR *v.* PEARY LALL PAUL [15 B. L. R., Ap., 12

5. ——— Mistake in summons—*Amendment of summons at hearing—Practice*—The defendant was manager of a joint Hindu family carrying on business in Bombay, Madras, and other places. In a suit in the High Court of Bombay against him as such manager, a decree was passed on the 11th

SUMMONS—*concluded.*

April 1896, in execution of which on the same day certain property, in which the joint family was interested, was attached On the 9th April 1896, however, the defendant had been adjudged an insolvent by the Insolvent Court at Madras under s 9 of the Insolvent Act On the 6th May 1896 the Official Assignee, Bombay, took out a summons to have the attachment removed By mistake the summons in this case purported to be taken out by the Official Assignee of Bombay, omitting to describe him as constituted attorney of the Official Assignee of Madras *Held* that the summons might be amended at the hearing by substituting the name of the Official Assignee of Madras and disposed of on that basis SABDAMAL JAGONATH *v* ARANVAYAL SABHAPATHY MOODLIAR . . . I. L. R, 21 Bom, 205

SUMMONS, SERVICE OF—

See SOLDIER . I L R., 11 Mad., 475

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE, s 622
[I L. R, 18 Bom, 606

See TRANSFER OF PROPERTY ACT, s. 132
[I. L R., 21 Bom, 60

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES 5 Bom, Cr, 20
[3 Mad, Ap, 5
6 Mad., Ap, 29

——— Date of service.

See LIMITATION ACT, 1877, ART 159
[I. L. R., 23 Calc, 573

——— Fine for avoiding—

See WITNESS—CIVIL CASES—DEFAULTING WITNESSES 1 B. L R., A. C, 186

——— on wrong person.

See COSTS—SPECIAL CASES—SERVICE OF SUMMONS BY MISTAKE
[I. L. R., 4 Bom, 619

1. ——— Proof of service—*Presumption—Objection taken on appeal*—No legal decree can be passed *ex parte* without a Court being satisfied of the due service of the summons. From the mere fact of the plaintiff obtaining an *ex-parte* decree, it is not to be presumed that the service of summons was proved To satisfy a Court of appeal if the objection is raised, there must be proof that the service of summons was actually made. RAM LOCHUN SOOR *v.* NITTYA KALLEE DEBIA . 12 W. R., 211

that section. TORAB ALI *v* CHOORAMUN SINGH CHOWDHRY . . . . . 24 W. R., 262

3 ——— Omission to serve summons—*Appearance of defendant*—Where a summons has not been issued to a defendant, the defect is cured by his appearance KHALUT CHUNDER GHOSE *v* SARODA SOONDERY DOSSEE Bourke, O. C, 244

SUMMONS, SERVICE OF—*continued*

4. ——— Mode of service—*Act XIX of 1853, s 26, Suit under—Personal service*—To maintain an action under Act XIX of 1853, s 26, it was necessary that the summons to attend should have been personally delivered DHUNPUT SING *v.* PREM BIBEE . . 24 W. R., 72

5. ——— *Substituted ser-*

be set aside on an allegation of no notice, and of good defence on the merits KISSUR CHUND *v.* BHOOBUNESSUR CHUNDER
[Bourke, O C., 25: Cor, 151

6 ——— *Practice—Setting aside ex-parte decree—Civil Procedure Code, 1877, ss 82, 84*—Where substituted service of the summons is ordered under s 82 of the Civil Procedure Code (Act X of 1877), a sufficient time ought, under s 84, to be given for notice of the fact to reach the defendant, wherever he may be, and, if an *ex parte* decree be obtained by the plaintiff the Court, on being satisfied that the time fixed was insufficient, will set aside the decree ALLY DEBANEE *v.* HYDER HOOSEIN . I. L R, 2 Bom, 449

7. ——— *Procedure in case of non service*—Every summons not actually served

returned to the Court and an order obtained from the Court as to the mode of service GOPAUL DOSS *v* GEREDHAREE DOSS . . 6 W. R., 13

8 ——— *Civil Procedure Code (Act XIV of 1882), ss 78, 80, 82—Substituted service—Duty of process server*—Mere temporary absence of a person to be served does not justify the process server in fixing the summons to a door. It is the duty of the process-server to take pains to find out the person to be served in order that, if possible, personal service may be effected. SUBRAMANIA PILLAI *v.* SUBRAMANIA AYYAR
[I. L. R., 21 Mad., 419

9. ——— *Service of summons on minors carrying on partnership business with others—Affixing summons on house in which business is carried on—Civil Procedure Code (Act XIV of 1882), ss 74, 76, and 443*—In a suit for the enforcement of an equitable mortgage of certain property belonging to a partnership business, brought against certain minors and other persons who constituted a firm carrying on business within the jurisdiction of the Court in which the suit was brought, but the minors resided outside its jurisdiction, the summonses were neither served upon the minors nor upon their guardian personally, but were affixed on the house in which the business was carried on. *Held* that there was no service of summons either personal or substituted upon the minors either under

SUMMONS, SERVICE OF—*concluded.*

defendants to an action brought on a joint promissory note does not give the third defendant, who has been properly served, ground for objecting to a decree which has been passed against him under Act V of 1866. EWING *v.* GOSAI DAS GHOSE
[2 B. L. R., Ap., 7

46. ——— *Defendant resident in another district—Act X of 1859, ss. 47, 56.*—In a suit for rent under Act X of 1859, service of summons on a defendant, whose abode is in another district by a peon from the Court of the Collector of the district in which the suit is brought, instead of through the Collector of the district in which the defendant resides, as required by s. 47 of the Act, is not such an irregularity as vitiates the whole proceedings and renders the decree, and a sale in execution thereof, void. *Per* JACKSON, *J.*—The words in s. 56, "upon proof that the summons or proclamation has been duly served according to the provisions of this Act," refer to the mode in which a summons is to be served, and not to the agency by which it is to be served. MACKINTOSH *v.* KALLY DOSS MULLICK . 11 B. L. R., 1: 19 W. R., 234

47. ——— *Service on wrong person—Erroneous description of defendant in plaint—Dismissal of suit.*—In a suit brought by the plaintiffs against *A*, the summons was by mistake served upon *B*, who thereupon filed a written statement denying his liability and alleging that he was erroneously described in the title to the plaint. On the day of the hearing of the case the plaintiff's agent saw *B* for the first time, and ascertained that he was not the real defendant in the suit. *Held* that the case having come on for hearing, and there being nothing to show that the plaintiffs had been in any way deceived by *B*, the proper order to be made was for the dismissal of the suit. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* MAHOMED IBRAHIM PARKAR . . . I. L. R., 4 Bom., 619

SUNDAY.

——— Arrest on—

See ARREST—CIVIL ARREST.
[4 Mad., Ap., 62

See CASES UNDER LORD'S DAY ACT.

——— Delivery of goods on—

See CONTRACT—CONSTRUCTION OF CONTRACTS . I. L. R., 15 Bom., 338

——— Presentation of plaint on—

See HOLIDAY.
[3 B. L. R., Ap., 72: 11 W. R., 537
16 W. R., 231

——— Time expiring on—

See CASES UNDER LIMITATION ACT, 1877, s. 5.

See WRITTEN STATEMENT . Cor., 39

SUNDAY—*concluded.*

——— Trial on—

See HOLIDAY . 8 B. L. R., Ap., 12
[W. R., 1864, Cr., 2
17 W. R., 230

See LORD'S DAY ACT . 6 N. W., 177

SUNDERBUNS BOUNDARY.

——— Beng. Reg. III of 1828, s. 13.—S. 13, Regulation III of 1828, was intended to make provision for the immediate settlement of the limits of the Sunderbuns; hence it fixed peremptorily a period after which the demarcation of those limits, made by the Special Commissioner to that end appointed, should be final. No person could come in after that period (namely, three months from the date of the Commissioner's proceeding fixing boundary) pleading infancy or other ground for re-opening the question of boundary, since the geographical boundary line was necessarily to be one and the same for all the world. Even within the period of limitation allowed, no one could be heard to object to the line, unless he declared and offered proof that at the time of the survey he was in the occupation of a definite quantity of land cleared and under cultivation within the line. After the line had once become final, no party could be heard to say that even cultivated lands within it were part of his settled zamindari. BARADAKANT ROY *v.* COMMISSIONER OF THE SUNDERBUNS
[2 B. L. R., P. C., 33: 11 W. R., P. C., 14

SUNDERBUNS ESTATE—

See BENGAL ACT VII OF 1864, s. 1.
[I. L. R., 14 Calc., 440

See SALE FOR ARREARS OF REVENUE—INCUMBRANCES—ACT XI OF 1859.
[I. L. R., 14 Calc., 440

SUNDERBUNS SETTLEMENT REGULATION (BENG. REG. III OF 1828).

——— Lease granted by duly constituted Revenue authority, Effect of settlement on.—*Per* BANERJEE, *J.*—Though certain provisions of Regulation III of 1828 go to show that the Sunderbuns, up to that date, continued the property of the State and had not been permanently settled with any one, that was intended to be said generally with regard to the tract of country known as the Sunderbuns as a whole, and it could not have been intended to undo the effect of any lease granted by any duly constituted Revenue authority. TAMASHA BIBI *v.* ASHUTOSH DHUR . . . . . 4 C. W. N., 513

SUPERINTENDENCE OF HIGH COURT.

	Col.
1. ACT XXIII OF 1861, s. 35 . . .	8997
2. BOMBAY REGULATION II OF 1827 . .	9003

PERINTENDENCE OF HIGH OURT—*continued*

	Col
CHARTER ACT (24 & 25 VICT c 104)	
s 15	9002
(a) CIVIL CASES	9002
(b) CRIMINAL CASES	9026
CIVIL PROCEDURE CODE s 622	9031

See BOND 5 B L R., 167

See CALCUTTA MUNICIPAL CONSOLIDATION ACT (1888), s 135 [I L R 26 Calc, 74 3 C W N, 70

See HIGH COURT JURISDICTION OF—BOMBAY—CIVIL 9 Bom, 249

See LAND ACQUISITION ACT 1870 [15 B L R, 197

See CASES UNDER REVISION—CIVIL CASES—SMALL CAUSE COURT CASES

——— Criminal Cases

See CASES UNDER REVISION—CRIMINAL CASES

1 ACT XXIII OF 1861 S 35

——— Exercise of superintendence

Orders of Court of first instance and Appellate urt—The High Court could interfere under 35 Act XXIII of 1861, with the order of the urt of first instance as well as of the Appellate urt where the orders of both the Courts appeared be without jurisdiction SHEO DYAL SINGH v HOMED KAMIL 3 Agra, Mis, 2

ceedings of the two lower Courts BHIMBAV VAJI v BHIMRAV GOVIND 11 Bom., 194

3 ——— *Trial with juris tion—Error in decision on facts*—The High urt cannot where an inferior Court has jurisdic n to try a case and has tried it merely because ere is an error apparent in the decision on the ts alter that decision where the law allows no peal IN THE MATTER OF THE PETITION OF PEAREE LL SAHOO 7 W R., 130

4 ——— *Courts of Revenue icers—Courts acting without jurisdiction*—The ovisions of s 35 of Act XXIII of 1861 extended to e Courts of Revenue officers acting without juris tion under Act X of 1859 HURPERSHAD v LALU [3 N W, 60 Agra, F B, Ed. 1874, 246

5 ——— *Act X of 1859 108—Sale by Deputy Collector—Appeal*—A De ity Collector sold an under tenure in execution of a

1 ACT XXIII OF 1861, S 35—*continued*

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tor, but on review set aside his former order on the ground that he had no jurisdiction the sale having taken place under the provisions of Act X of 1859 An application was made to the High Court under s 35 of Act XXIII of 1861 to set aside the order of the Collector on the ground that the Collector had no power to review his own judgment and consequently his first order stood which the High Court ought to set aside and pass such order as it might think right and reverse the order of the Deputy Collector The question was referred to a Full Bench whether s 35 applied to the order of the Collector The Full Bench refused to consider the question referred, on the ground that it was the intention of Act X of 1859 that the sale by the Deputy Collector should be final IN THE MATTER OF THE PETITION OF DOCOWRI KAZI B L. R., Sup Vol, 517 [6 W R, Act X, 53

6 ——— *Order illegally*

execution No appeal could be made against the order but the Civil Judge entertained an appeal and reversed the order of the District Munsif The High Court set aside the order of the Civil Judge under s 35 Act XXIII of 1861 but by virtue of the powers given by the section the order of the District Munsif was also annulled SUBRAYA GOUNDEN v VENKATAGIRI AIYAR 6 Mad 22

7 ——— *Court exceeding*

Sudder Court may set aside the decision passed on appeal in such case by the subordinate Court or may pass such other order in the case as to such Sudder Court may seem right meant that where a Court exceeds its jurisdiction the High Court may set aside that part of the order which is in excess of jurisdic

it when it ought to be heard by another subordinate Court which has jurisdiction to hear it the Court may set aside the decision of the Court which had no jurisdiction and may if it think right, refer the case to the Court which had jurisdiction even if it be too late to prefer a fresh appeal to that Court The Judge having entertained an appeal where none lay,

SUPERINTENDENCE OF HIGH COURT—*continued.*

1. ACT XXIII OF 1861, S. 35—*continued.*

is no ground for interfering with a decision which the Legislature intended to be final. JACKSON, *J.*, differed. IN THE MATTER OF THE PETITION OF SUBJAN OSTAGUR

[B. L. R., Sup. Vol., 531: 6 W. R., Mis., 77

8. ——— *Power to call for record—Discretion of Court.*—Under s. 35 of Act XXIII of 1861, there was a discretion in the Court to call for the record or not; and in cases where the application was made a considerable time after the decree, the Court refused to call for it. BOODHEE *v.* ALLEE HYDER

[1 N. W., Ed. 1873, 271

9. ——— *Appeal from order refusing to rectify a decree.*—The general powers of the High Court do not enable it to hear an appeal from an order of a Zillah Judge refusing to rectify a decree. MAHOMED BUSHEEROOLLAH CHOWDHRY *v.* RAMKANT CHOWDHRY . . . 9 W. R., 394

10. ——— *Application to transfer appeal—Laches.*—An application to the High Court, under s. 35 of Act XXIII of 1861, to order a subordinate Court to receive an appeal, which in ordinary course ought to have been received within fifteen days of the original decision (in this case to transfer an appeal from a Court which had dealt with it without jurisdiction) ought to be made either immediately upon the quashing of the order of the subordinate Appellate Court, or promptly and without any avoidable delay. IN THE MATTER OF RUSSICK LALL CHATTERJEE . 15 W. R., 518

11. ——— *Appeal preferred in Court having no jurisdiction—Extension of time for appealing.*—When an appeal had been preferred by the plaintiff to the Judge which ought to have been preferred to the Collector, the Court made an order giving the plaintiff thirty days within which to prefer his appeal to the Collector instead. ADHIRANI NARAIN KUMARI RAJRANI OF BURDWAN *v.* PURIKHIT RAWTRA

[7 B. L. R., Ap., 15: 15 W. R., 426

12. ——— *Decision by Collector as to genuineness of deed.*—Where a Collector decided upon the genuineness of a deed of sale, he was held to have exceeded his authority, and his order could be set aside by the High Court under s. 35, Act XXIII of 1861. TOYLUCKONATH SIRDAR *v.* BALUCKRAM DOSS . W. R., 1864, Act X, 26

13. ——— *Illegal order of Deputy Collector.*—Where a Deputy Collector, who had decreed a suit for ejectment on proof of arrears due, held afterwards in execution that as the arrear had been paid up within fifteen days the tenant could not be ejected in accordance with s. 78, Act X of 1859, his order in execution was declared to be *ultra vires* and illegal, and was set aside by the High Court under its general powers of revision. DEEN DYAL PURAMANICK *v.* RAMCOOMAR CHOWDHRY . . . . . . 10 W. R., 345

14. ——— *Order of Collector ejecting gantidar.*—Where a gantidar on the suit of the patnidar was ejected from his holding, notwithstanding a right of occupancy independent of his ganti, an appeal lay to the Collector, whose order could only be questioned by a civil suit, and not under s. 35, Act XXIII of 1861. RUGHOONATH MITTER *v.* WOOMANATH CHOWDHRY

[W. R., 1864, Act X, 47

15. ——— *Extraordinary jurisdiction of High Court—Power to deal with order staying execution.*—Where a Subordinate Judge, in consequence of a fresh suit by the plaintiff, stayed the execution of a decree which was passed in the defendants' favour for costs, the High Court, in exercise of its extraordinary jurisdiction, reversed the stay order. GAMBHIRMAL *v.* CHEJMAL JODHMAL

[11 Bom., 151

16. ——— *Refusal to set aside Collector's order made without jurisdiction, where it reversed an illegal order.*—A rule having been issued calling on a judgment-debtor to show cause why an order of the Collector in appeal, reversing an order made by a Deputy Collector in execution, should not be set aside, the rule was discharged with costs, inasmuch as, although the Collector had no jurisdiction to make the order which he made, the Deputy Collector's order was wrong, being a violation of the provisions of s. 92 of Act X of 1859, and could not be upheld. TARACHUND MUNDUL *v.* BHYRUB CHUNDER CHUCKERBUTTY

[15 W. R., 551

17. ——— *Right of appeal—Sale for arrears of rent, Irregularity in.*—A Civil Court had no power, under s. 35 of Act XXIII of 1861, to reverse a sale for arrears of rent under Act X of 1859 on account of irregularity or damage, without the aggrieved party having first appealed to the Commissioner of Revenue. Act XXIII of 1861 gave no power to the High Court to consider the legality or otherwise of the Collector's order without such appeal. SUDDER GOLAB SINGH *v.* RAM BUDDUL SINGH

[1 Ind. Jur., N. S., 1: 4 W. R., Act X, 28

18. ——— *Setting aside sale in execution—Courts exceeding jurisdiction.*—If the Judge exceeded his jurisdiction in hearing the appeal from the order of the Sudder Ameen setting aside a sale in execution, on the ground of the non-payment of the purchase-money within the proper time,—*Held* that it was competent for the High Court, exercising its power under s. 35, Act XXIII of 1861, to set aside the order of the Sudder Ameen. AMANEE BEGUM *v.* KOORBAN ALI 3 Agra, 204

MAHESH PANDEY *v.* BALDUP PANDEY

[3 Agra, Rev., 10

19. ——— *Act XXIII of 1861, s. 35—Order made without jurisdiction—Interference with order of lower Courts.*—Petitioner bought at a Court sale certain property which had

SUPERINTENDENCE OF HIGH COURT—*continued.*

1 ACT XXIII OF 1861, S 35—*concluded.*

been at
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certific
No 79 of 1866 presented a pe...
...of the property, on the ground that it had been

tion of the decree in suit No ... the Civil Court and purchased by the plaintiff in that suit Thereupon petitioner applied to the Munsif to re sell the property in satisfaction of his claim The Mun
upon ap
special a
the sale

jurisdiction to entertain the appeal ... giving effect to the petition of special appeal as a petition under s. 35 of Act XXIII of 1861, that the orders of the lower Courts should be annulled and the petitioner declared entitled to an order and certificate perfecting his title ANNAMALAI CHETTI *v* MUTHU LINGA PILLAI . . . 6 Mad , 360

20. ——— *Order remanding suit—Application to set aside order from which appeal could have been brought* —Where a Judge on regu... by a defendant had remanded a case for
mis
was comp...
appeal from the order of the Judge remanding the suit the High Court had no power under s 35, Act XXIII of 1861, to entertain a miscellaneous application to set aside the Judge's order TUKEE ALI *v* SAADUT ALI . 5 N. W , 14

21.— ——— *Power of Judge to interfer*
offence
having
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dant in ...
ment, the High Court set aside the Judge's order under the provisions of s 35 of Act XXIII of 1861 IN THE MATTER OF THE PETITION OF PULWUNT RAI [6 N. W., 124

22.——— *Power of High Court* —Under this section, the High Court should not only reverse the illegal order, but pass the order that should have been made ADURMONEE DOSSEE *v* KAMINEE SONDUREE DEBIA [3 W. R., Act X, 145

RAJ CHUNDER ROY CHOWDHRY *v* GREESH CHUNDER ROY . . . 5 W. R., Mis , 45

SUPERINTENDENCE OF HIGH COURT—*continued*

2 BOMBAY REGULATION II OF 1827.

matter ...
... Subordinate Judge, to whom the plaint was then

second class Subordinate Judge who had originally returned the plaint That Judge held that he had no jurisdiction to review the order passed by his predecessor The plaintiff appealed, and the Judge rejected the appeal, holding that no appeal lay against *an order refusing to grant a review* The plaintiff applied to the High Court under its extraordinary jurisdiction *Held* that the case was one in which the High Court ought to interfere under cl 2 s. 5 of Bombay Regul tion II of 1827 The order of the second class Subordinate Judge was set aside with a direction that he should admit the plaint as of the date of its original presentation GIRDHARLAL HARGOVANDAS *v* LALLU JAGJIVAN [I. L R., 20 Bom , 50

3. CHARTER ACT (24 & 25 VICT , C 104), S 15

(a) CIVIL CASES

24 ——— *Functions of High Court under s 15 of the Charter Act—Nature of superintendence.—Held* (*per* STUART, *C J*) that under s 15 of 24 & 25 Vict., c 104, the power of superintendence to be exercised by the High Court is not merely administrative or ministerial, but also judicial BIJEE KOOER *v* DAMODUR DASS [5 N W , 55

25 ——— *Object of superin*...

control over the Courts subject to its ... jurisdiction DOSSEE *v* SREENIBASH DEY [12 W. R , 74

26 ——— *Beng Act VIII of 18*
rent,
VIII
fere under s ...
under the Letters Patent,—*Held* that the power conferred by that section ought not to be exercised in such a way as to do indirectly that which the law forbids to be done directly. KARIM SHEIKH *v* MUKHODA SOONDERY DASSEE [15 B. L R., 111: 23 W. R., 268

Reserving decision in MOKHODA SOONDUREE DASSEE *v.* KUREEM SHAIKH . . . 23 W. R., 11

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

27. ——— *Existence of remedy by suit.*—Where the applicant has a remedy by regular suit, the Court is reluctant to interfere. MADHUB CHUNDER GIREE *v.* SHAM CHAND GIREE. IN THE MATTER OF THE PETITION OF MADHUB CHUNDER GIREE . . I. L. R., 3 Calc., 243

MAHASANKAR HARISANKAR *v.* VALIBHAI UMANJI [6 Bom., A. C., 174

BISHNO CHUNDER BHUTTACHARJEE *v.* SHOSHEE MOHUN PAL CHOWDHRY . . 22 W. R., 277

HUREEHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS [20 W. R., 202

28. ——— *Existence of remedy by suit.*—The High Court cannot interfere under s. 15 of the High Courts Act where the lower Court has not acted without jurisdiction, or where there is a remedy by a regular suit. KHORSHED ALI *v.* CHOWDHRY WAHID ALI . 15 W. R., 170

DOORGA SOONDUREE DEBIA *v.* KASHEE KANT CHUCKERBUTTY . . . . 14 W. R., 212

29. ——— *Existence of other remedy.*—Where a petitioner had his remedy under s. 269, Act VIII of 1859, and the Munsif had, whether right or wrong, acted within his jurisdiction, the Court held it had no power to interfere under s. 15 of the Charter Act. HUR KISHORE AUDHICARY *v.* SUDOY CHUNDER NUNDEE [17 W. R., 80

30. ——— *Existence of remedy by regular suit.*—*S* was adjudicated an insolvent in the Insolvent Court, Calcutta. *R* thereupon deposited in the Court at Shahabad a sum for which *S* had obtained a decree against him. This decree had been attached by *T* under a decree obtained by him against *S*, and they applied to the Shahabad Court for satisfaction of their decree out of the money deposited by *R*. The Official Assignee opposed the application, which was granted. The Official Assignee petitioned the High Court to interfere under s. 15, 24 & 25 Vict., c. 104, but the Court refused to interfere, on the ground that there was a remedy by suit for injunction and application for a preliminary order under s. 92, Act VIII of 1859. IN RE MILLER [4 B. L. R., A. C., 72 note: 12 W. R., 103

31. ——— *Delay in making application.*—The Court refused to extend assistance by the exercise of its extraordinary powers under the High Court Act, s. 15, to parties who were chargeable with great and unexplained delay. RADHA MOHUN ROY *v.* RAJ CHUNDER SHAH . 22 W. R., 522

BHUGGOBUTTY KOWAR *v.* MONEY [2 C. L. R., 545

32. ——— *Laches of appellant—Power of High Court.*—Where the Court below adopted a different procedure, and, after partitioning the property, put up for sale the divided share of the execution-debtor, the High Court, in the exercise of its extraordinary jurisdiction, refused to interfere, in consequence of the laches of the applicant in neglecting to avail himself of an opportunity which the lower Appellate Court had given him, of showing that the partition which had been made was injurious to him. MATHURADAS GOVARDHANDAS *v.* FATMA ULKA BEGAM [5 Bom., A. C., 63

33. ——— *Order of Judge under s. 269, Civil Procedure Code, 1859—Resistance to delivery of possession in execution of decree.*—The Court declined to interfere under s. 15 of the Charter Act in order to set aside an order lawfully made by a Judge under s. 269, Act VIII of 1859, upon a complaint made to him of resistance or obstruction to the delivery of possession under s. 264, and stated that it would not have interfered even if the order had been made without jurisdiction, after the delay that had taken place, the petitioners' remedy being to bring a regular suit to establish their right. ZUHOORUN BEGUM *v.* MAHOMED WAJED [18 W. R., 87

34. ——— *Laches—Existence of another remedy.*—Petitioner, a decree-holder, allowed another decree-holder to obtain a decree upon a regular suit declaring him entitled to follow the properties in dispute in execution of his decree, and did nothing even after that decree was obtained until another decree-holder applied for the attachment and sale of the properties in execution of his decree, and the lower Court having all the parties arrayed before it, and having passed an order rejecting the petitioner's application, petitioner, after more than ninety days (the period limited for an appeal) had elapsed, invoked the aid of the High Court under s. 15 of the Charter Act; but the Court declined to exercise that jurisdiction, leaving the petitioner to his remedy in a regular suit. KALEE KISHORE SEN *v.* WISE [17 W. R., 477

35. ——— *Order rejecting claim of attorney to lien on document for his costs—Existence of other remedies.*—A firm of solicitors, having been summoned to produce certain documents before the Court, objected to do so claiming a lien upon them for costs due to them from the party at whose instance the documents were called, and their objection having been overruled, they moved the High Court under s. 15 of the Charter Act. *Held* that the High Court is not compelled to use the power of superintendence created by the Charter Act unless, in the interests of justice, it finds it necessary to do so, and that in the present case there is no danger of any such failure of justice as would render it necessary for the High Court to interfere, specially having regard to the fact that the loss of this particular remedy, assuming the attorney to be entitled to it, does not involve the loss of his costs, as he still has all the other remedies, for the recovery of his claim. *Semble*—The power of superintendence under s. 15

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C 104), S 15 —*continued*

would be exercised by the High Court to correct judicial errors where, in the interest of justice, it is necessary to do so SWINHOE & CHUNDER *v* HERA LAL SIRKAR 2 C W N, 727

36.—————— *Effect as to merits of case of rejection of claim to exercise of ex*

rejection of an application under s 15 does not necessarily amount to a decision on the merits Where a suit for rent was thrown out by a Munsif and subsequently thrown out by a Small Cause Court and in either case the High Court refused to interfere under s 15, but a different Munsif interpreted the second order of the High Court as a variation of the first, and entertained the suit,—*Held* that, though the action of the High Court did not affect the merits, yet, as plaintiff had a substantial claim the second Munsif did right in receiving it SHOOVANKURRY DABEE *v* DWARKA NATH MOOKERJEE [25 W R, 344

37. —————— *Giving appeal where none lies—Order doing injustice*—The High Court should not, in the exercise of its extraordinary powers, give an appeal in a case where the law provides none. Nor should the Court in the exercise of those powers interfere when such interference would have the effect of working an injustice NARAYANBHAI LALBHAI *v* GANGAKRISHNA BALKRISHNA 4 Bom, A. C, 87

38. —— Exercise of jurisdiction—
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[9 W. R., 115

39. —————— *Party bringing appeal without right of appeal*—*Per* BIRCH, J—A party who has preferred an appeal to the High Court when the law gave him no right of appeal is not entitled upon the hearing to ask the Court to treat it as an application for the exercise of its extraordinary jurisdiction under s 15 of 24 & 25 Vict., c. 104. IN THE MATTER OF THE PETITION OF SOORJA KANT ACHARJ CHOWDRY [I. L. R., 1 Calc., 383

40. —————— *Admission of appeal after time—Appeal, Delay in filing—Act X of 1859, s 25*—The High Court, under its general power of superintendence, set aside an order of a lower Appellate Court admitting an appeal filed beyond time, on the ground that the lower Appellate Court had no jurisdiction to entertain an appeal passed by the Collector under s. 25, Act X of 1859 SUCTAR [2 B. L. R., Ap, 35

S C OMRA KUSHYO *v* GUGUN SHOOTUR [11 W. R., 130

41 —————— *Appeal withdrawn without authority—Application to set aside order refusing to restore appeal*—An appeal which had been preferred to the Judge was withdrawn the next day through another pleader. Shortly after an application was made to have the appeal restored, on the ground that the second pleader had no authority to withdraw the appeal The Judge refused the application *Held* that no appeal lay from that order, and the High Court refused to interfere under s 15, 24 & 25 Vict, c 104, as under the circumstances they thought the Judge should not be directed to take further action in the matter MUDHOOMUTTY DEBIA *v* DHUNPUT SINGH [13 W. R, 167

42 *Order releasing property from attachment*—An order of a competent Court releasing property from attachment after investigation of a claim put forward ought not to be interfered with on any ground of mere irregularity, unless a failure of justice has occurred. BISHNO CHUNDER BHUTTACHARJEE *v* SHOSHEE MOHUN PAL CHOWDHRY 22 W R, 277

43 —— *Illegal arrest in Court of Magistrate*—The High Court declined to exercise the extraordinary powers described in s 15 of the High Courts Act, where a Magistrate did not interfere with the arrest in his Court, under a civil process of a person who had been accused before the Magistrate, but was acquitted at the time of his arrest IN THE MATTER OF THE PETITION OF GUZEREE LALL 13 W. R., 393

44 *Award under the Nawab Nazim's Debts Act, 1873, on matter already decided by decree*—Where certain judgment-creditors submitted a decree of Court to the Commissioners appointed under the Nawab Nazim's Debts Act, 1873, as if it were a new and unascertained claim and the Commissioners expressed their opinion on the matter involved in it (although it had been already determined), the High Court held it had no authority to inquire into their award OMRAO BEGUM *v* COMMISSIONERS UNDER ACT XVII OF 1873 24 W R., 394

45. *Power over Collectors*—Under s. 15 of the High Courts Act, the High Court had a power of superintendence over Collectors' Courts, and could interfere to restrain a Collector from exercising a jurisdiction which properly belongs to a Zillah Judge BHYRUB CHUNDER CHUNDER *v* SHAMA SOONDEREE DEBIA [6 W. R, Act X, 68

Contra, HURO MOHUN MOOKERJEE *v* KEDARNATH DOSS 5 W. R., Act X, 25

46 —————— *Setting aside decree made ultra vires.*—Where a decree is ultra

vires, the debtor's remedy is either by an application for review or by an application to the High Court to exercise its powers under the Charter Act, s. 15. DOORGA DOSS SANDYAL *v.* PANCHOO RAM MUNDUL [23 W. R., 271

47. ———— *Refusal of application under Act VIII of 1859, s. 119—Ex-parte decree.*—Judgment was passed *ex-parte* against a defendant who had not appeared. The defendant failed to show cause for setting aside the judgment under s. 119 of Act VIII of 1859. He then applied to the High Court under s. 15 of 24 & 25 Vict., c. 104, to set aside a portion of the decree as having been passed without jurisdiction. The Court refused to interfere. IN THE MATTER OF THE PETITION OF LESLIE [10 B. L. R., 68: 18 W. R., 474

48. ———— *Discretion of Municipality—Rates for cleaning tank.*—Case in which the Munsif held that the Municipality had expended more money than was necessary in cleaning the petitioner's tank, and the Judge on appeal set aside the Munsif's decision and gave the Municipality a decree, on the ground that under the law the matter was purely within the discretion of the Municipality. *Held* that, even though the rates charged by the Municipality were higher than those which could be obtained by other persons, that was no ground for the interference of the High Court. IN THE MATTER OF JOGESH CHUNDER DUTT [16 W. R., 285

49. ———— *Exercise of discretion under Act XX of 1863, ss. 4 and 5—Refusal of jurisdiction.*—Where an application by a petitioner under Act XX of 1863, s. 5, to be appointed manager of a religious endowment, was rejected by the Judge after hearing both sides, on the ground that there had been no transfer of the property by the Local Government under s. 4, the Court refused to interfere under s. 15 of the Charter Act, holding that the Judge had not declined to accept jurisdiction in the case, and that he was right in refusing to exercise the jurisdiction vested in him by s. 5. ASHRUF HOSSEIN *v.* HAZARA BEGUM . . . 18 W. R., 396

50. ———— *Order rejecting document under s. 129, Civil Procedure Code, 1859.*—The High Court refused to interfere under s. 15 of the Charter Act to set aside an order rejecting a document made by a Court under Act VIII of 1859, s. 129, an appeal from such order being barred by s. 363. IN THE MATTER OF ERSKINE 18 W. R., 511

51. ———— *Error of law.*—*Quære*—Is a conflict between a Judge's order and a direction of law ground for the High Court to exercise its powers of interference? DOSSEE *v.* SREENIBASH DEY . . . . 12 W. R., 74

52. ———— *Error of law—Case where no appeal lies to High Court.*—Mere errors of law committed by a lower Appellate Court in cases in which the High Court has no appellate jurisdiction do not give the latter Court power to interfere under s. 15 of the Charter Act, its interference being restricted to cases in which the lower Court exercises a jurisdiction which it has not, or refuses to exercise a jurisdiction which it has. KALEE HUR DASS *v.* ROODRESSUR CHUCKERBUTTY [15 W. R., 90

ISSUR CHUNDER PODDAR *v.* SHOSHEE DHUR SEN [18 W. R., 289

53. ———— *Court acting without jurisdiction—Error in law.*—The interference of the High Court under s. 15, 24 & 25 Vict., c. 104, should be confined to cases in which the lower Court has acted without jurisdiction, or has improperly declined jurisdiction, and should not be extended to cases in which the Court, though competent in respect of the subject-matter, has misconceived the law in deciding a case. IN RE KASINATH ROY CHOWDRY . 7 B. L. R., 146 note

S. C. KASHEENATH ROY CHOWDHRY *v.* SHABITREE SOONDUREE DOSSEE . 11 W. R., 402

54. ———— *Error in law—Injustice, Prevention of.*—Where there has been a manifest error of law, and to prevent manifest injustice, the High Court in the exercise of its extraordinary jurisdiction will remand a case to the lower Court, though the value of the claim may be under R500 and the case may be one in which a special appeal is not allowed. RAMABAI *v.* TRIMBAK GANESH DESAI . . . 9 Bom., 283

55. ———— *Erroneous order in law made in consequence of false statement of party.*—The High Court will interfere, under s. 15 of the Charter Act, with an order made by a lower Court which is merely contrary to law, when that order has been passed in consequence of a wilfully false statement made by the opposite party. ROGHONUNDUN LALL *v.* MOHESH LALL 3 C. L. R., 137

56. ———— *Wrong decision where no special appeal lay.*—Where the lower Court's decision was fundamentally wrong in law, and the liability of the defendants in the essential matter of the suit had not been properly tried, the High Court, although not warranted in interfering in special appeal (by reason of the suit being a money claim under R500), was justified in interfering under its general powers of supervision. SHAMDANEE *v.* BHOJOO RAM . . . . 22 W. R., 44

57. ———— *Refusal of order of confirmation of sale—Error of law.*—A certified purchaser of property sold in execution of a decree applied to the Judge for an order of confirmation of sale, and was refused. *Held* that the High Court had no power to interfere with the Judge's decision, even though erroneous on a point of law, upon a matter entirely within his jurisdiction, and from

SUPERINTENDENCE OF HIGH COURT—*continued*

3 CHARTER ACT (24 & 25 VICT, C 104), S 15 —*continued*

which there was no appeal IN THE MATTER OF THE PETITION OF DURGA CHARAN SIRKAR [2 B. L R., A. C, 165

S C DOORGA CHURN SIRCAR *v* DOORGA CHURN GHOSSAL 11 W R, 23

58. ———— *Error of law*—The High Court will not, under s 15 of 24 & 25 Vict, c 104, interfere with judgments, decrees, or orders of a lower Court on the bare ground that they are erroneous at law, or are based upon a wrong conclusion of facts, there must be some special

[illegible]

59 ———— *Error of law*—

[illegible]

proceeded on an error of law or an error of fact Where, therefore, on appeal by the judgment debtor against an order confirming a sale of immoveable property in the execution of a decree, the lower Court set aside the [illegible] the auct[illegible] tioned [illegible] Court's order, the High Court refused to interfere TEJ RAM *v* HARSUKH I. L R, 1 All., 101

60 ———— *Revision of judicial proceeding—Jurisdiction of High Court Civil Procedure Code, s 622*—*Held* by EDGE, [illegible]

[illegible]

subordinate Co[illegible] or an error of fact The High Court's power to direct a Subordinate Judge to do his duty is not limited to cases in which such Judge declines to hear or determine a suit or application within his jurisdiction *Held* by STRAIGHT and TYRRELL, JJ, that the word "superintendence" used in s 15 of the Charter Act contemplated and now includes powers of a judicial or quasi judicial character, apart from those conferred on the Court by s 622 of the Civil Procedure Code, but that the last mentioned provision may properly be accepted as indicating the extent to which the Court should ordinarily interfere with the findings of such subordinate tribunals as are invested with exclusive jurisdiction to try and determine all questions of law and fact arising in suits within their exclusive cognizance, and in which their decisions are declared by law to be final *Tej Ram* v *Harsukh, I L R, 1 All, 101, Girdhari Singh* v *Hardeo Narain Singh, L. R, 3 I A 230*, and *In the matter of the petition of Mathra Parshad, I L. R, 1 All, 296*, referred to The judgment of PETHERAM, C J, in *Badami Kuar* v *Dina Rai, I. L R, 8 All, 111*, explained MUHAMMAD SULEMAN KHAN *v* FATIMA [I. L R, 9 All., 104

61. ———— *Civil Procedure Code (1882), s 622—Failure of duty by a Subordinate Court*—Where a subordinate Court had signally failed to do its duty, and there had been no patent neglect on the part of the petitioner,—*Held* on an application for revision, that it is competent for the High Court under the general powers of supervision vested in it by s 15 of 24 & 25 Vict c 104, to direct the subordinate Court to do its duty, and complete the case according to law *Muhammad Suleman Khan* v *Fatima, I L R, 9 All 104*, referred to ABDULLAH *v* SALARU [I L. R, 18 All, 4

62 ———— *Error of law—Rejection of claim to attached property without decision on necessary questions*—Where it was found that the Court below was wrong in disallowing the claim without determining certain questions of law which it should have determined, the error was held to be not such that it ought to be rectified by the High Court in the exercise of its power of revision under s 15 of the Stat 24 & 25 Vict, c 104, or under s 622 Civil Procedure Code S 15 of the Stat 24 & 25 Vict, c 104, gives the High Court, [illegible] superintendence over

[illegible]

All, 101 BHAGWAN RAMANUJ [illegible] MONI DASSI 1 C W N, 617

63 ———— *Supervision as to execution of order*—The High Court has jurisdiction to direct a lower Court in what manner its own (the High Court's) decree or order shall be carried into effect by that Court, and to see that the lower Court does not pervert the order or do that which wa[illegible] order con[illegible] a decree [illegible] KALEE DOSS SANDYAL *v* [illegible] [14 W R., 145

64. ———— *Act X of 1859, s 151—Execution proceedings*—Where a Deputy Collector refused to entertain an application by a

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

defendant for realization of costs awarded by a Court of appeal, and for refund of the amount which the plaintiff had realized from the defendant in execution of the decree of the lower Court, but which had been disallowed by the Court of appeal, and where, on appeal, the Judge held that no appeal lay under s. 151 of Act X of 1859,—*Held* that the High Court had power, under 24 & 25 Vict., c. 104, s. 15, to order the Deputy Collector to enforce restitution of the amount realized from the defendant in excess of the amount allowed by the Court of appeal, and also to execute that part of the decree which awarded costs to the defendant. IN THE MATTER OF THE PETITION OF GOBIND KOOMAR CHOWDRY . B. L. R., Sup. Vol., 714 [2 Ind Jur., N. S., 199: 7 W. R., 520

65. ———— Order of Collector giving possession, Reversal of.—Where a Collector, having passed an order for possession of a certain tenure in favour of the applicant on his purchase thereof at a sale for arrears, reversed such order at the instance of an objector who had already purchased the same at a sale under Bengal Act VIII of 1865 for arrears of rent due upon it, and had been put in possession, the High Court refused to exercise its powers under s. 15 of the Charter Act. NARAYANI DAYI DEBI *v.* CHANDI CHARAN CHOWDHRY [3 B. L. R., Ap., 65

S. C. NARAINEE DABEE *v.* CHUNDEE CHURN CHOWDHRY . . . . 11 W. R., 512

66. ———— *Letters Patent, cl. 16—Release of person imprisoned in execution of decree.*—Where, in execution of a summary decree for rent obtained under Regulation VII of 1799 in 1851 against the father of the petitioner and another, the petitioner was arrested and lodged in jail in January 1867,—*Held* by the majority of the Court (NORMAN, *J.*, dissenting) that the High Court could not, under the general powers of superintendence vested in it by s. 15 of the High Courts Act or s. 16 of the Letters Patent, interfere to order the release of the petitioner. GOPAL SINGH *v.* COURT OF WARDS . . . . 7 W. R., 430

67. ———— *Assignment of decree—Civil Procedure Code, 1859, ss. 246, 265—Duty of Judge.*—Where a judgment-creditor seeks to attach and sell a decree on the allegation that the assignment of it was not a *bonâ fide* conveyance, and the conveyance purports to be one of property specified in s. 265, Act VIII of 1859, it is the duty of the Judge under s. 246 to enquire whether the assignee of the decree was or was not in *bonâ fide* possession of the property. If the Judge inquires into the facts, no appeal lies from his order; but if he refuses an inquiry, the High Court, under its general powers of superintendence, can and ought to require the Judge to make the inquiry. GREESH CHUNDER LAHOREE *v.* KASHEESSUREE DEBIA . 8 W. R., 26

68. ———— *Execution of decrees for rent—Act X of 1859, ss. 23, 77, and 160.*—Whether a decree for rent, under Act X of 1859, made in one district, can be transferred to another for execution, is a question which the High Court can decide in the exercise of its "superintendence over all Courts subject to its appellate jurisdiction," under 24 & 25 Vict., c. 104, s. 15. NILMONI SINGH DEO *v.* TARANATH MUKERJEE [I. L. R., 9 Calc., 295: 12 C. L. R., 361 L. R., 9 I. A., 174

69. ———— *Acting in excess of, or refusal of, jurisdiction.*—A party dissatisfied with a legitimate finding under s. 15, Act XIV of 1859, has a special remedy by a suit in a Civil Court, and cannot claim the High Court's interference under s. 15, 24 & 25 Vict., c. 104, except where the Judge has exercised a jurisdiction which he has not, or has refused to exercise a jurisdiction which he has. DOORGA SOONDUREE DEBIA *v.* KASHEE KANT CHUCKERBUTTY 14 W. R., 212

70. ———— *Order exempting debtor from liability on ground of limitation.*—S. 15 of the 24 & 25 Vict., c. 104, does not enable the High Court, by way of motion, to deal with an order made by a lower Appellate Court in cases where the latter has jurisdiction, and the law declares that its order should be final. An order exempting a debtor from liability on the question of limitation, even though erroneous, is an exercise of jurisdiction. SHOWDAMINEE DOSSEE *v.* MANICK RAM CHOWDHRY [9 W. R., 386

KALEE PERSAUD CHOWDHRY *v.* RAM SOONDUR SIRCAR . . . . . 12 W. R., 129

71. ———— *Postponement of execution sale without taking security.*—Where, in a case under Bengal Act VIII of 1869, a Munsif, on a claim being preferred to property attached in execution, postponed the sale of it without taking security or having the amount of the decree deposited,—*Held* that his proceeding, though erroneous, was in a case in which he had and exercised jurisdiction, and that his decision ought not to be set aside under the 15th section of the Act 24 & 25 Vict., c. 104. IN THE MATTER OF THE PETITION OF BAGRAM [20 W. R., 10

72. ———— *Execution of decree, Refusal to stay—Allegation of fraud and finding against it.*—*W* got a decree against *M* in the Court of the Sudder Ameen, and in execution attached certain property of the judgment-debtor. *J*, who had a decree against the same judgment-debtor in the Court of the Principal Sudder Ameen, applied to the Court of the Sudder Ameen to stay its proceedings, on the ground that *W*'s decree had been obtained by fraud. The Sudder Ameen refusing the application, *J* appealed to the Judge, who saw no ground for the imputation of fraud. *Held* (by HOBHOUSE, *J.*) that the Judge's judgment was on the face of it good and in a case within his jurisdiction, and that it did not call for an exercise of the

SUPERINTENDENCE OF HIGH COURT—*continued*

3 CHARTER ACT (24 & 25 VICT, C 104) S 15 —*continued*

extraordinary power given to the High Court by s 15 of the Charter Act JUMAL ALI v WAHED ALI 11 W R, 97

73 —— —— *Order within jurisdiction—Suit for arrears of rent and eject ment*—A suit for arrears of rent where the plaint

land and the arrears of rent thereupon *Held* that, as the Collector exercised a jurisdiction which he had no question of ejectment having been decided by the first Court and no appeal having been made to him upon that point, the High Court refused to exercise the power they had to interfere under s 15 of 24 & 25 Vict, c 104 DURSUN BHUGUT v MAHOMED ALI 13 W R., 438

74 *Suit brought in wrong Court*—The plaintiff brought a suit which was cognizable by a Small Cause Court, in a Munsif's Court having jurisdiction within the local limits of the jurisdiction of the Small Cause Court He obtained a decree but the decree was reversed on appeal On special appeal the Court though holding that no special appeal would lie set aside the decrees of both the lower Courts as having been passed without jurisdiction TARINI CHARAN MOOKERJEE v PURNA CHANDRA ROY

[6 B. L. R., 717. 15 W R, 397

75 —— *Order made without jurisdiction*—The High Court exercised its powers of superintendence to set aside a judgment of a Judge reversing a judgment of a Munsif passed in accordance with the award, the Judge's order being without jurisdiction. IN THE MATTER OF ILAHI BUX . 5 B L R., Ap, 75

S C ELAHEE BUKSH v HAJOO 14 W R, 33

76 —— *Order made without jurisdiction—Appeal in rent suit to wrong Court*—A suit to recover R234 as arrears of rent having been decreed by the Deputy Collector for R49, the defendant appealed to the Judge but plaintiff appealed to the Collector The Judge dismissed the defendant's appeal, and the Collector gave plaintiff a decree for the full amount originally claimed The High Court, under s 15 of the Charter Act set aside the Collector's decree as made without jurisdiction ROOKNEE ROY v AMRITH LALL . 14 W R., 254

77. —— *Order of Collector made without jurisdiction*—*N* sued his gomashta (*M*) and *M*'s surety (*C*) under s. 24 Act X of 1859 and got a decree *ex parte* as against the surety Upon *N*'s proceeding to execute the decree, *C* applied for a revival of the suit, which was granted, and a re-hearing was appointed for the 4th May 1869 but subsequently postponed to the 8th, on which date the case was struck off by the Deputy Collector, under the provisions of s 51 Subsequently *N* applied for a fresh execution of his original decree to the Collector who sent the record to the Deputy Collector with instructions to carry out the execution Thereupon *C* obtained a rule from

file annulled the decree so far as *C* was concerned and that the Collector's order directing execution was without jurisdiction and the High Court would set it aside under their *powers of superintendence.* GUDADHUR CHATTERJEE v NUNDLALL MOOKERJEE

[12 W R, 406

78 —— *Order contrary to law from which no appeal lay—Civil Procedure Code 1859 s 246*—Where an order was made by a Munsif under s 246 of Act VIII of 1859 and a regular appeal was preferred and then a special appeal to the High Court that Court while refusing to entertain the appeal on the ground that the Munsif's order was final or to set aside the order under s 15 of 24 & 25 Vict c 104, expressed an opinion that the order was contrary to law and left it to the Munsif to act upon such opinion KALI CHURN GIR GOSSAIN v BANGSHI MOHAN DAS

[6 B L. R., 727 15 W R, 339

79 —— *Order contrary to law—Civil Procedure Code 1859 s 246—Want of jurisdiction—Act VIII of 1859 s 246 Order under*—In a case decided by the Munsif in which it was found by the High Court that there was no appeal to the Judge the Judge's order was set aside as passed without jurisdiction and the Munsif's order was also set aside as not having been passed under s 246 Act VIII of 1859 under which section the objection had been perferred HARRIS CHUNDRA GUPTO v SHASHI MALA GUPTI

[6 B L. R., 721. 15 W R, 163

80 —— *Order passed without jurisdiction—Claim overvalued for purpose of giving jurisdiction.*—The plaintiff brought a suit in the Court of the Subordinate Judge of Dacca, under s 15, Act XIV of 1859 The defendant pleaded that the Judge had no jurisdiction inasmuch as, if the suit had been properly valued it was one cognizable by the Munsif The Judge found that the value of the property did not exceed R500 and that the plaintiff had over estimated the value of the claim in order to exceed the jurisdiction, but instead of returning the plaint he proceeded to try the case on its merits and dismissed the suit On an application on behalf of the plaintiff to set aside the judgment as passed without jurisdiction, the High Court refused to interfere under s 15 of 24 & 25 Vict., c 104. IN THE MATTER OF THE PETITION OF WISE . 10 B. L. R, Ap, 20

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15—*continued.*

81. ——— *Order passed without jurisdiction—Revival of suit—Act X of 1859, ss. 54, 55, and 58.*—A suit for arrears of rent was dismissed by the Deputy Collector for default under s. 54, Act X of 1859. Thereupon a fresh suit was brought by the same plaintiff for the recovery of the said arrears, and a decree was obtained. On appeal, the Judge reversed the decision of the Deputy Collector and dismissed the suit. The plaintiff then applied under s. 58, Act X of 1859, for revival of the former suit, but the Deputy Collector rejected the application. On appeal, the Judge held that the suit might be revived, and remanded the case for trial. The High Court, under its general power of superintendence, set aside the order of the Judge as passed without jurisdiction, holding that, although the Deputy Collector had formerly struck off the case under s. 54, yet it was in fact an order under s. 55, and therefore under s. 58, Act X of 1859, no appeal lay to the Judge. HABIB SOBHAN *v.* MAHENDRA NATH ROY . 2 B. L. R., Ap., 32: 11 W. R., 129

82. ——— *Order made without jurisdiction—Omission to object to illegal proceeding.*—Where a respondent in a Collector's Court applied in special appeal to the High Court to exercise the general powers of supervision vested in it by s. 35, Act XXIII of 1861, and s. 15 of 24 & 25 Vict., c. 104, to set aside the Collector's proceedings as without jurisdiction, it was held that, as he had allowed the appeal to be heard without objection, he was not entitled to the relief sought. DROBO MOYEE DABEE *v.* BIPIN MUNDUL . 10 W. R., 6

83. ——— *Error in reversing judgment for want of jurisdiction.*—Where the District Judge reversed the decree of the Munsif for want of jurisdiction, although the amount of the claim was under R500, the Court, in the exercise of its extraordinary jurisdiction, interfered. RATANSHANKAR REVASHANKAR *v.* GULABSHANKAR LALSHANKAR . . . 4 Bom., A. C., 173

84. ——— *Judge exceeding his powers under s. 216, Act VIII of 1859.*—Where a Subordinate Judge, under Act VIII of 1859, s. 216, declared that a decree-holder was entitled to enforce his mortgage lien against certain attached property, although that property was in the possession of the claimant on his own account, and not on behalf of the judgment-debtor, inasmuch as the claimant professed to derive his title under a *kadaece* executed in his favour by the judgment-debtor,—*Held* that the Subordinate Judge had proceeded beyond the authority given him by the section, and the High Court would therefore exercise the extraordinary jurisdiction given by s. 15 of the Charter Act, by setting aside the Judge's order and directing the property to be released. IN THE MATTER OF KHELLAT CHUNDER GHOSE *v.* GOURCHURN MOJOOMDAR [18 W. R., 402

85. ——— *Improper exercise or improper refusal to exercise jurisdiction.*—The High Court will not exercise its extraordinary powers under the Charter Act, s. 15, except where jurisdiction has been either exercised or refused improperly: it will not interfere under that section even where a wrong decision has been arrived at, if the Court which arrived at such decision exercised a jurisdiction which it properly possessed. KHOWAZ RAM BUX SINGH *v.* BISHENDHAREE GEER [23 W. R., 403

86. ——— *Refusal to entertain suit by Court from which there is an appeal.*—When a Court, subject to the appellate jurisdiction of the High Court, refuses to entertain a suit over which it has jurisdiction, the High Court may, under its general power of superintendence, order the Court below to entertain such suit, notwithstanding that no appeal would lie to the High Court from the decree in such suit. HARDAYAL MANDAL *v.* TIRTHANAND THAKUR [4 B. L. R., Ap., 28: 13 W. R., 34

87. ——— *Refusal to make inquiry as to possession in claim under s. 246, Civil Procedure Code, 1859.*—In a case of a claim to attached property where the Subordinate Judge did not consider himself competent to make the inquiry as to the nature of the possession necessary under s. 246, Act VIII of 1859, the High Court declined to interfere under the special provisions of the Charter Act, because the decree-holder had a remedy by regular suit. IN THE MATTER OF HURREHUR MOOKERJEE. HURREHUR MOOKERJEE *v.* NOBIN CHUNDER DOSS . . 20 W. R., 202

88. ——— *Decision on irregular procedure under s. 230, Civil Procedure Code, 1859.*—A decree-holder in execution having got possession of certain property, application was made for an investigation under s. 230, Act VIII of 1859. The Munsif, without going into evidence, rejected the application, and the Judge, in the same manner, reversed the Munsif's judgment and gave the applicant possession. The High Court on application set aside both decisions as not being decisions on the investigation of a suit within the section. The question still remained for decision whether the property was *bonâ fide* in the possession of the applicant on his own account or on account of some person other than the defendant. WOMESH CHUNDER ROY *v.* BHOBO MOHINEE DOSSEE . 11 W. R., 197

89. ——— *Order rejecting application by party not interested under s. [illegible], Act VIII of 1859, s. [illegible].* Whether or not an appeal lies from the decision of a lower Court rejecting an application by a party other than a defendant, under s. [illegible], Act VIII of 1859, [illegible] the right of the decree-holder to [illegible] the High Court may, under the 15th section of the Charter, compel the lower Court to [illegible] decision. [illegible]

SUPERINTENDENCE OF HIGH COURT—*continued.*

3 CHARTER ACT (24 & 25 VICT, C. 104), S. 15 —*continued.*

1 W. R, 140, referred to and questioned COLLECTOR OF BOGRA v KRISHNA INDRA ROY [2 B L R., A. C, 301: 11 W. R., 181

90. ———————— *Denial of jurisdiction—Act X of 1859, s 77*—*A* sued *B*, a raiyat, for arrears of rent *C* was added as a party under s 77, Act X of 1859. The Collector on appeal r f ... to try C's claim under s. 77 because she had

[7 B. L. R, 144: 15 W. R., 418

91. — *property*— ... if refuses ... is bound to attach, he may be compelled to do so by the High Court in the exercise of its powers of supervision. MUNOHUR PAUL v WISE 15 W. R., 246

92. —— ——— —— *Refusal to exe*

Collector to do his duty ... SHURUT SOONDUREE DABEE 14 W. R., 9

93 ———————— *Refusal of Deputy Collector to sell in execution of decree where plaintiff has obtained declaration of his right in Civil Court*—If a decree of a Civil Court declares

... do his duty does not give a fresh cause of action for the purpose of obtaining a second declaration, though it may be a good ground for asking the High Court to use its extraordinary powers to put the Deputy Collector right. RUGHOONUNDUN SINGH v. COCHRANE . 20 W. R., 16

94. ———————— *Refusal to consider grounds—Review of judgment of predecessor*—Where a Court subordinate to the High Court

... of its powers of superintendence under s. 15 of the High Courts Act, directed such Court to consider the grounds. IN THE MATTER OF THE PETITION OF MATHURA PARSHAD . I. L. R., 1 All., 296

95. ——— *Refusal to grant application for review of judgment of predecessor—Refusal to exercise jurisdiction.*—Forty six suits were brought against the defendants and dismissed by the Munsif of B The plaintiffs in each

... forty cases was made to the District Judge, who ordered that the petition for review should stand over until the result of the special appeal should be known. The High Court having on special appeal restored the decision of the Munsif dismissing the

... therefore no power under s. 15 of the Charter Act to interfere RAM LALL SINGH v JANKI MAHATOON [4 C L. R., 14

96 ———————— *Wrongly declining to exercise jurisdiction*—Where a Judge declined jurisdiction on a wrong ground as that of a question of title having arisen, when even if that were the case he had jurisdiction, the High Court interfered under s 15 of the Charter Act. RAM JEEBUN KOYER v SHAHAZADEE BEGUM [9 W R., 336

... Court, and not the ... because an appeal lies to the High Court from their decisions in certain cases only The High Court consequently has the power of superintendence over those Courts under s. 15 of the Charter Act. IN THE MATTER OF THE PETITION OF ABDOOL ALI 15 B. L. R., 197

98. *Dismissal of ministerial officer*—With reference to the rule that its extraordinary powers of superintendence should not be exercised except for the purpose of protecting a complainant in a matter wherein otherwise he would not be able to obtain redress, and where the applicant showed himself worthy of its interference, the High Court declined to interfere on behalf of a party who complained that a District Judge had acted *ultra vires* in dismissing him from the post of serishtadar of the Munsif's Court, seeing that it was open to the applicant, under the Civil Courts Act, to seek his remedy from the Local Government. IN THE MATTER OF THE PETITION OF AKBAR ALI [19 W. R., 148

99 ———————— *Dismissal of ministerial officer*—A Munsif, having charged his serishtadar with carelessness and irregularities, recommended his transfer to some other Munsif. The Judge, after calling for and receiving an explanation from the serishtadar, *dismissed him from office The* High Court refused to interfere in the exercise of its

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

general power of superintendence, holding that, although the Judge had exercised an original power where he had only an appellate jurisdiction, he had done so on a complaint made by the Munsif, and the petitioner, if aggrieved, had a remedy under Act VI of 1871 in an application to the Local Government. IN THE MATTER OF FAKEER CHAND LALL

[20 W. R., 470

100. ———— *Dismissal of suit in absence as original plaintiff, after adding third party of plaintiff.*—*Per* NORMAN, *J.* (SETON-KARR, *J.*, dissenting).—Where a Court added a third party as a plaintiff, and, in the absence of the original plaintiff, improperly dismissed the suit, it was held that the suit was still pending, and undisposed of by the lower Court as regards the plaintiff; and the lower Court was ordered, under the High Court's power of superintendence vested in it by the 24 & 25 Vict., c. 204, s. 15, to take up and try the case accordingly. CHUNDER KANT BHUTTACHARJEE *v.* BINDABUN CHUNDER MOOKERJEE . 7 W. R., 277

S. C. IN THE MATTER OF THE PETITION OF CHUNDER KANT BHUTTACHARJEE

[B. L. R., Sup. Vol., Ap., 43

101. ———— *Erroneous order —Putting on the record party not a legal representative.*—Where a decree had been obtained against a British subject domiciled in India, who subsequently died intestate, and an order was made reviving the decree against one of his children, and ordering execution to proceed before letters of administration to his estate had been taken out, and without inquiry being made as to who were his legal personal representatives,—*Held* that, although no appeal lay against the order, yet that, as it was clearly erroneous and as, under the circumstances of the case, it must lead to the greatest confusion and injury to the interests of the parties if the execution was proceeded with, the Court was justified in interfering under s. 15 of the Charter Act. POGOSE *v.* CATCHICK

[I. L. R., 3 Calc., 708: 2 C. L. R., 278

But *see* POGOSE *v.* AHSANOOLLAH

[I. L. R., 3 Calc., 710 note

102. ———— *Order substituting name of purchaser instead of plaintiff—Jurisdiction of Civil Court.*—A Civil Court is not competent to order the name of a purchaser of the rights of the plaintiff in a suit to be substituted for that of the plaintiff, or, upon the application of the party so substituted, to allow the suit to be withdrawn. Such an order, if made, is made without jurisdiction, and is not an order of that description in respect of which the Legislature intended either to give or to deny the right of appeal. But the order is one which the High Court may set aside in the exercise of the superintendence vested in it by s. 15 of 24 & 25 Vict., c. 104. JUDOOPUTTEE CHATTERJEE *v.* CHUNDER KANT BHUTTACHARJEE

[9 W. R., 309

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

103. ———— *Pauper, Rejection of application to sue as—Civil Procedure Code, 1859, s. 304—Case where there is no appeal.* —Where a decision (*e.g.*, the rejection of an application under Act VIII of 1859, s. 304) is declared by law not to be subject to appeal, the High Court cannot interfere under 24 & 25 Vict., c. 104, s. 15. BABUR ALI *v.* GOKUL LALL . . 24 W. R., 62

104. ———— *Recorder of Moulmein—Act XXI of 1863, ss. 16 and 17—Suspension of pleader.*—The High Court has, under s. 15 of 24 & 25 Vict., c. 104, general superintendence over the Court of the Recorder of Moulmein established under Act XXI of 1863. An order pased by the Recorder of Moulmein under s. 16 or 17 of Act XXI of 1863, granting or withdrawing a license to practise as a pleader in the Small Cause Courts of Moulmein, is an exercise of power which comes under the superintendence of the High Court. IN THE MATTER OF THOMSON

[6 B. L. R., 180: 14 W. R., 257

105. ———— *Refusal of original Court to entertain application for review—Refusal of leave to sue in formâ pauperis.*—Under s. 15 of 24 & 25 Vict., c. 104, the High Court set aside an order of a Court of original jurisdiction, refusing to entertain an application to review an order refusing a petition for leave to sue *in formâ pauperis*, on the ground that the Court had no jurisdiction to entertain it. IN THE MATTER OF THE PETITION OF UMASUNDARI DEBI

[5 B. L. R., Ap., 29

106. ———— *Review, Admission of, after prescribed time.*—The High Court refused to interfere with the order of a Court granting a review of its judgment, although the application for review was not made until three years after the date of the decree, the party who preferred the application for the review having satisfied such lower Court of the existence of just and reasonable cause for his not having preferred his application for review within ninety days. AJONNISSA BIBEE *v.* SURJA KANT ACHARJI

[2 B. L. R., A. C., 181: 11 W. R., 56

107. ———— *Review, Admission of, after prescribed time.*—The lower Appellate Court admitted a petition for review of its judgment after a lapse of ninety days from the date of the decision without recording that just and reasonable cause for the delay had been shown. On an application under s. 15 of the Charter Act to the High Court to set aside the order of the lower Court, on the ground that that Court had no jurisdiction to entertain an application for review after a lapse of ninety days without recording that there was just and reasonable cause for the delay, the High Court refused to interfere. ASRAFANNISSA BEGUM *v.* INAET HOSSEIN . 5 B. L. R., 316: 13 W. R., 439

SUPERINTENDENCE OF HIGH COURT—*continued*

3 CHARTER ACT (24 & 25 VICT C 104) S 15 —*continued*

108 ——— *Order to com*

upon ... lute a sale which had been made by that Court but which the Court had not confirmed and thought it not expedient to confirm IN THE MATTER OF THE PETITION OF OODIUT ZUMAN 8 W R, 109

109 ——— *Sale made pending an inquiry under Act XVII of 1873 (the Nawab*

... thereof were under inquiry by commissioners appointed under Act XVII of 1873 (the Nawab Nazim's Debts Act) it was sold with an intimation that the purchaser would purchase an empty title Subsequently the commissioners came to an actual finding under s 12 declaring the property to be held by the Government of India and their opinion that it could not be alienated by the Nawab Nazim In consequence of this the Court which had sold it refused to confirm the sale The High Court refused to interfere under the High Courts Act s 15 holding that it was so manifestly right and proper in the interests of all parties to withhold confirmation of the sale in this case that it was unnecessary to inquire whether the order was in strict conformity with the law or not KALEE MOHUN SIRCAR *v* HUMAYOON KADER MAHOMED ALI MIRZA BAHADOOR *alias* AMEER SAHEB 24 W R 311

... into the matter Where a Judge in such a case ... aside a sale after finding material irregularity and substantial injury his finding is final and cannot be questioned by the High Court in the exercise of its extraordinary jurisdiction SOOKOOMAR SINGH *v* KASHEE SINGH 13 W R, 250

111 ——— *Act VIII of 1859 s 364—Reversal of sale for inadequacy of price*—Certain bank shares the property of a judgment debtor were sold in execution of a decree ... afterwards reversed the sale ... The ... purch ... part ... Act ... grant relief IN THE MA... DACOSTA B L R, Sup Vol, 432

S C. DACOSTA *v* HALL 5 W R, Mis, 25

112 ——— *Civil Procedure Code, 1877, ss 290 and 622—Irregularity in sale*

day of ... of a Civil Court on the 15th of March following so tha... bet... sal... to... gro... s... its... as... the ... *the ground that the fact of the sale having taken* place twenty nine instead of thirty days after the *notification was merely an irregularity and that, as* the execution debtor had not shown that he had suffered any damage from the irregularity the sale ... An application was then ...

erroneous ... tion to a F... ments of s... the High C... the Charter *as amended* order Th... tion referre... s 290 to ... under its s... notwithstanding and apart ... ther it would set aside) the order of the Judicial Commissioner BHEKRAJ KORRI *v* GENDH LAL TEWARI I L R, 5 Calc, 878

113 ——— *Application to set aside sale in execution of decree—Circumstances disentitling party to relief* A party applying to the High Court for relief under s 15 of 24 & 25 Vict c 104 must clearly show that he has not contributed by his own conduct to his being placed in the position he finds himself in A decree for posses...

... this decree the plaintiff obtained possession of the lands. The executors of *M*, the last surviving member of *G M & Co* having subsequently assigned the concern to *A* who also took upon himself the denapaona the plaintiff applied under s 210 to execute the decree against *A* in respect of wasilat; and two *successive notices under s 216 were issued to A to* show cause why the decree should not be executed against ... he ... advised that the suit was a nullity ... exe- cution ... senta- tive of any of the ju... to ap- pear, and certain property belonging to him was sold

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

in execution of the decree without opposition on his part, and the sale having been duly confirmed, the purchaser, who was also the decree-holder, was put into possession. *A* thereupon applied to the Court executing the decree to have the sale set aside, and, his application being refused, petitioned the High Court under s. 15 of 24 & 25 Vict., c. 104, for the same relief. The High Court, however, refused to interfere, both upon the principle above stated, and likewise because the purchaser, being also the decree-holder, could not successfully oppose a suit by *A* to have the sale set aside. IN THE MATTER OF THE PETITION OF COCHRANE

[14 B. L. R., 330: 23 W. R., 310

114. ——— *Setting aside order properly made for rateable distribution of sale-proceeds—Claim, Order on.*—A claim was disallowed to certain property which had been attached in execution of a decree. The property was sold, and after satisfaction of the decree it was ordered that the surplus proceeds should be rateably distributed among other judgment-creditors who had subsequently attached. On the application of the unsuccessful claimant again preferring his claim to the property, the Principal Sudder Ameen made another order, setting aside the previous order for distribution so far as it affected some of the creditors. *Held* that the Principal Sudder Ameen had no jurisdiction to make the latter order. The High Court would therefore interfere to set it aside under its general power of superintendence. IN THE MATTER OF THE PETITION OF DHIRAJ MAHTAB CHAND BAHADUR

[2 B. L. R., A. C., 217

S. C. MAHARAJAH OF BURDWAN *v.* HEERALALL SEAL . . . . . 11 W. R., 54

115. ——— *Order giving sanction to prosecution—Grant of certificate of administration to one holding under forged will.*—The application of a widow for a certificate having been opposed by a third party (*K*), who produced an alleged will of the deceased, the Judge ordered the grant of a certificate to *K*. Subsequently the widow petitioned for an inquiry into the genuineness of the will, and the Judge, after examining witnesses, considered there were sufficient grounds for investigating the charge of forgery, and directed that *K* should be sent to the Magistrate for that purpose. *Held* that the Judge ought not to have granted the certificate to the party who produced the will unless he was quite satisfied that the will was genuine. As the order, however, directing that *K* should be sent to a Magistrate was made with jurisdiction, the High Court could not interfere. IN THE MATTER OF KOONJ BEHAREE GHUR . 11 W. R., 171

116. ——— *Rejection of security offered for stay of execution pending suit brought.*—Where the security offered by a judgment-debtor, with a view to execution against her being stayed until the decision of a suit for an account which she had brought against the decree-holder was rejected by the lower Court, it was held that the order of rejection could not be interfered with by the High Court under s. 15 of the High Courts Act. IN THE MATTER OF THE PETITION OF JODOO MONEE DOSSEE . . . 11 W. R., 494

117. ——— *Act XI of 1865, s. 4—Interference with decision of Small Cause Court.*—The powers conferred by 24 & 25 Vict., c. 104, s. 15, and Act XI of 1865, s. 4, do not enable the High Court to interfere with the decision of a Court of Small Causes refusing an application on the part of a defendant to send for a copy of a letter which was filed in another suit, and which the defendant desired to put in as evidence. IN THE MATTER OF THE PETITION OF MUNNOO SINGH

[19 W. R., 306

118. ——— *Order made by Acting Judge and set aside by permanent incumbent.*—Where an acting Judge of a Small Cause Court had made an order which the permanent incumbent on his return considered to have been made without authority of law,—*Held* that the High Court was not competent to take up the case on a reference from the Judge, but that the party aggrieved should apply to the High Court, if he thought fit, to exercise its extraordinary powers under s. 15 of the High Courts Act. DEEP CHAND *v.* GOUREE

[13 W. R., 98

119. ——— *Cases where no special appeal lies and no question of jurisdiction arises—Act XXIII of 1861, s. 27.*—Under s. 15 of 24 & 25 Vict., c. 104, the High Court will not interfere with the decision of the Courts below in cases in which a special appeal is forbidden by s. 27 of Act XXIII of 1861, and where there is no question of jurisdiction involved. IN THE MATTER OF THE PETITION OF LUKHYKANT BOSE

[I. L. R., 1 Calc., 180

S. C. KETIKI CHUTIANY *v.* LUKHEE KANT BOSE

[24 W. R., 440

120. ——— *Interference by High Court in case cognizable by Small Cause Court—Act XXIII of 1861, s. 27.*—In a suit cognizable by the Small Cause Court, and in which no special appeal lay to the High Court under s. 27, Act XXIII of 1861, the High Court exercised its extraordinary powers and dismissed the suit. DHIRAJ MAHTAB CHUND BAHADUR *v.* SHAGOR KUNDU

[5 B. L. R., Ap., 91

121. ——— *Want of jurisdiction to determine part of case.*—In a suit of a Small Cause Court nature (to recover the value of produce) which had been decided upon the real issues between the parties, the High Court refused to exercise its extraordinary powers under s. 15 of the Charter, merely on the ground that the Civil Court had no jurisdiction to determine a part of the dispute, which was whether the land whose produce

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT, C. 104), S 15—*continued.*

was claimed was or was not in *the British territory.* BHYRUL SINGH *v* JHOGRU PATNEE [11 W. R., 506

against a company which is being wound up by order of the Court of Chancery in England under the Companies Act, 1862, where the circumstances are such as to render it proper to do so BANK OF HINDUSTAN, CHINA, AND JAPAN *v* PREMCHAND RAICHAND AHMEDBHAI HABIBHAI *v* PREMCHAND RAICHAND 5 Bom, O C, 63

123 — *Recorder of*

OF MEE TSEE 15 W. R., 351

124 — *Order passed without legal evidence—Civil Procedure Code, 1859, s 246*—A party to a certain proceeding instituted under s 246, Act VIII of 1859, having been summoned to give evidence did not attend The Court, considering that his absence was without lawful excuse, decided the matter before it with reference to the provisions of s 170 of the Civil Procedure Code It was then attempted to move the High Court under s 15 of 24 & 25 Vict, c 104, to set aside the order as passed without legal evidence *Held* that such action would be substantially a special appeal, which could not be allowed with reference to s 246. DHUNPUT SINGH *v* INDURCHUNDER DOOGUR [13 W R., 121

125 — *Execution proceedings—Refusal of party to attend as witness*—

to interfere with it IN THE MATTER OF THE PETITION OF JANEER BULLUB SEN [B. L. R., Sup. Vol., 716

S. C. JANOKEE BULLUB SEIN *v* DUKHINA MOHUN CHOWDHRY 7 W. R., 519

126. — *Improper exercise of judicial powers under Legal Practitioners' Act (XVIII of 1879), as amended by Act XI of 1896, s. 36—Nature of proof required*—Where a District Judge relying upon an unverified report purporting to come from the Secretary of a Bar ... *the* ... words ... 36 of ... ners' ... the ... the Court is to exercise its judicial determination, and the Judge had acted without having before him any legal evidence as required by s 36 of the Legal Practitioners' Act. In such a case the High Court may interfere under the wide powers of superintendence given by s 15 of the Charter Act. IN RE SIDDESHWAR BORAL 4 C W. N, 36

127. — *Order under Legal Practitioners' Act XVIII of 1879, s 36—Order including a person's name in the list of touts*—*Held* that in the case of an order passed under s 36 of Act XVIII of 1879 the High Court could only interfere in the exercise of the powers of superintendence conferred upon it by s 15 of the High Courts Act, 1861, and that it would not

OF MADHO RAM I. L. R., 21 All., 181

(b) CRIMINAL CASES

who had been convicted of riot by a Magistrate, and who, having a right of appeal to the Sessions Court, instead of doing so, moved the High Court under cl 15 of the Charter, the Court would not interfere until that remedy had been resorted to. EMPRESS *v* RAJCOOMAR SINGH I. L R, 3 Calc, 573

S C RAJCOOMAR SINGH *v* DINONATH GHUTTUCK [1 C. L. R., 353

129. — *Setting aside valid conviction in case wrongly instituted*—*Per* MACLEAN, J—The High Court may without reference to the Local Government set aside a conviction made upon a trial improperly originated IN THE MATTER OF NOBIN CHUNDER BANIKYA EMPRESS *v* NOBIN CHUNDER BANIKYA I. L. R., 8 Calc., 580

S C. NOBIN CHUNDER BANIKYA *v* EMPRESS [10 C L. R., 369

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 25 VICT., C. 104), S. 15 —*continued.*

130. ——————— *Order of discharge—Presidency Magistrates Act (IV of 1876), s. 168—Case in which there is no appeal.*—The only course to be pursued where it is sought to set aside an order of discharge made by a Presidency Magistrate is that laid down in s. 168 of Act IV of 1877; and as by that section there is no appeal allowed to a complainant who is a private individual, it is not open to him, by invoking the aid of the High Court under s. 15 of the Charter, to obtain under the Court's extraordinary powers that which he might obtain had he a right of appeal. IN THE MATTER OF POONA CHURN PAL . . I. L. R., 7 Calc., 447

131. ——————— *Error in law—Offence not constituted on facts proved in non-appealable case.*—Where the High Court was of opinion (in a case in which no appeal lay to it) that the facts found by the Court that tried the prisoners, and the Court of appeal from such Court did not constitute the offence of cheating of which the prisoners had been convicted, the High Court, in the exercise of its extraordinary jurisdiction, reversed the conviction and sentence. REG. v. HARGOVANDAS [9 Bom., 448

132. ——————— *Act V of 1861, s. 17—Order of executive nature.*—The High Court, while considering that an order by a Magistrate professing to act under s. 17 of Act V of 1861 was illegal, refused to interfere, on the ground that the order was one of an executive nature. IN THE MATTER OF THE PETITION OF RAHOMAN SIRKAR [10 B. L. R., Ap., 4: 18 W. R., Cr., 67

133. ——————— *Orders under Criminal Procedure Code, 1872, s. 518—Nuisance.*—The extraordinary powers conferred on the High Court by s. 15 of the Charter Act extend to the revising of orders passed under the Code of Criminal Procedure, s. 518. GHOSHAIN LUCHMUN PERSHAD POOREE v. POHOOP NARAIN POOREE [24 W. R., Cr., 30

134. ——————— *Order under Criminal Procedure Code (Act X of 1872), s. 518—Nuisances.*—The High Court cannot interfere, under s. 15 of the Charter Act, with orders duly passed by a Magistrate under s. 518 of the Criminal Procedure Code. IN THE MATTER OF THE PETITION OF CHUNDER NATH SEN . . I. L. R., 2 Calc., 293

135. ——————— *Orders under Criminal Procedure Code, 1872, s. 518—Criminal Procedure Code, 1872, s. 297—Orders in judicial proceeding.*—*Held* that, orders legally made under s. 518 of the Code of Criminal Procedure not being orders made in a judicial proceeding, the High Court had no power to deal with them under s. 297 of the Code of Criminal Procedure; but where an order under that section was illegal, the High Court set it aside under s. 15 of the Charter Act, 24 & 25 Vict., c. 104. *In the matter of the petition of Chunder Nath Sen, I. L. R., 2 Calc., 293,* followed. BRADLEY v. JAMESON [I. L. R., 8 Calc., 580

CHUNDER COOMAR ROY v. OMESH CHUNDER MOJOOMDAR . . . 22 W. R., Cr., 78

BANEE MADHUB GHOSE v. WOOMANATH ROY CHOWDHRY . . . 21 W. R., Cr., 26

SREENATH DUTT v. UNNODA CHURN DUTT [23 W. R., Cr., 34

136. ——————— *Order of Magistrate under s. 518, Criminal Procedure Code, 1872.*—The High Court, in the exercise of the jurisdiction given to it by s. 15 of the Charter Act, issued a rule *nisi* at the instance of the party aggrieved calling upon the opposite party to show cause why an order made by a Magistrate which was complained of should not be set aside for want of jurisdiction, although the matter had already been brought to the notice of the Court on a reference made by the Sessions Judge. KALI NARAIN ROY CHOWDHRY v. ABDOOL GUFFOOR KHAN . 22 W. R., Cr., 24

137. ——————— *Criminal Procedure Code (Act X of 1882), s. 144—Order to abstain from certain act.*—A Deputy Commissioner passed an order under s. 144 of the Code of Criminal Procedure, prohibiting a person from collecting any rent or attempting to collect rent, either herself or through any of her officers or servants, from the raiyats of two specified pergunnahs; and also from effecting any sale or putting in hand any transaction with regard to standing trees or collected timbers in an estate, or erecting any adda or kuchari in such pergunnahs for a period of two months. Upon an application to set aside such order,—*Held* that the High Court had jurisdiction under s. 15 of the Charter Act to set it aside if it were made without jurisdiction. ABAYESWARI DEBI v. SIDHESWARI DEBI . . . I. L. R., 16 Calc., 80

138. ——————— *Criminal Procedure Code (Act V of 1898), ss. 145, 435—Power of local Legislature—Power of revision by High Court—Order concerning a ferry purporting to be made under s. 145.*—The local Legislature has power to overrule a statutory power conferred on the High Court; but this was not the object and result of the legislation expressed in s. 435 of the Criminal Procedure Code of 1898. *Empress v. Burah, I. L. R., 4 Calc., 172: L. R., 5 I. A., 178,* referred to. The terms of s. 435 mean that orders under the exempted sections mentioned in cl. (3) must have been passed with jurisdiction. If such orders are challenged as made without jurisdiction, the mere fact of their purporting to be passed under the exempted sections would not bring them within those sections so as to debar the exercise of powers by the High Court under s. 15 of the Charter Act. *Abayeswari Debi* v. *Sidheswari Debi, I. L. R., 16 Calc., 80; Ananda Chandra Bhuttacharjee* v. *Stephen, I. L. R., 19 Calc., 127; Roop*

SUPERINTENDENCE OF HIGH COURT—*continued*

3. CHARTER ACT (24 & 25 VICT, C 104), S. 15 —*continued*

Lal Das v *Manook, 2 C W N*, 572, and *Queen-Empress* v. *Pratap Chunder Ghose, I. L. R*, 25 *Calc*, 852, followed. HURBULLUBH NARAIN SINGH v LUCHMESWAR PROSAD SINGH

[I. L. R., 26 Calc., 188
3 C. W. N, 49

139 ——— *Criminal Pro-*

made parties and not the tenants. *Held* (AMEER ALI and STANLEY, *JJ*) that the tenants were necessary parties to the proceeding, and the omission to make them parties went to the root of the case and was an illegality affecting jurisdiction which would justify the High Court in setting aside the order PRINSEP, *J* —The omission to join the tenants could

High Court's powers are under the Charter Act, and these could be exercised only in respect of jurisdiction Where a Magistrate recorded proceedings under s 145 of the Code of Criminal Procedure and his successor on the same materials revised those pro-

persons named therein —*Held* (AMEER ALI and STANLEY, *JJ*) that it was an abuse of jurisdiction on the part of the Magistrate *so to alter the proceedings* and an abuse which would justify the intervention of the High Court under the powers conferred by the Charter AMEER ALI, *J* —The High Court has the power to interfere both under its revisional jurisdiction as also under cl. 15 of the Charter *Hurbullubh Narain Singh* v *Lachmeswar Prosad Singh, I L R*, 26 *Calc*, 188, referred to. LAL DHARI SINGH v SUKDEO NARAIN SINGH

[I. L. R., 27 Calc, 893
4 C W. N, 613

140 ——— *Order of remand—Criminal Procedure Code (Act XXV of 1861), s 221* —Where a Magistrate had adjourned an inquiry for a cause not contemplated by s. 221 of the Criminal Procedure Code, the High Court, in exercise of the power of superintendence conferred by s. 15 of 24 & 25 Vict, c. 104, set aside the order of remand IN THE MATTER OF THE PETITION OF MATHURANATH CHUCKERBUTTY

[9 B. L. R, 354: 17 W. R., Cr, 55

a Court subject to the control of the High Court under s 15, 24 & 25 Vict, c. 104. IN RE GOVERNMENT OF BENGAL QUEEN v AMEER KHAN

[7 B. L R., 250 note: 15 W R, Cr, 60

142. ——— *Order by Judge of High Court in its original criminal jurisdiction* —Where an application was made to the Judge sitting on the original side of the High Court to transfer a case from Patna in the exercise of the extraordinary jurisdiction of the High Court and the application was adjourned, and an order made calling on the Government to show cause why it should not be removed, the High Court on the appellate side, on a petition setting forth that the order was without jurisdiction, as the rules of the High Court had appointed a particular Bench to hear cases from Patna, refused to interfere IN RE GOVERNMENT OF BENGAL QUEEN v AMEER KHAN

[7 B L. R., 244 note

143. ——— *Order of Magistrate for warrant without jurisdiction* —The High Court has power under its general powers of superintendence to quash an order made by a Magistrate without jurisdiction for the issue of a warrant IN THE MATTER OF BANKA BEHARI GHOSE

[2 B. L R., A Cr, 17 11 W R., 26

144. ——— *Power of High Court to revise an order as to sanction under s 197 of the Criminal Procedure Code—Criminal Procedure Code (Act V of 1898), s 197 and s 439* —A pleader applied to the Chief Presidency Magistrate for sanction under s. 197 of the Criminal Procedure Code to prosecute an Honorary Magistrate for using insulting and defamatory language towards him in the course of the trial of a case and sanction was refused On application to the High Court,—*Held*, under the revisional powers conferred by the Criminal Procedure Code, the High Court has no authority to interfere with an order made by a Subordinate Court granting or refusing sanction under s. 197 of the Code, but it has sufficient authority for that purpose under s. 15 of the Charter Act (24 & 25 Vict., c 104) NANDO LAL BASAK v MITTER

[I. L. R., 26 Calc, 852
3 C. W. N, 539

145. ——— *Power of High Court to revise order of Presidency Magistrate dismissing complaint—Letters Patent, High Court, cl. 28—Order for further enquiry* —The High Court has powers of revision in respect of an order of discharge passed by a Presidency Magistrate, by reason not of cl 28 of the Letters Patent, 1865, but of

SUPERINTENDENCE OF HIGH COURT—*continued.*

3. CHARTER ACT (24 & 24 VICT., C. 104), S. 15 —*concluded.*

s. 15 of the Charter Act (24 & 25 Vict., c. 104). That section has always been interpreted in a very extended meaning so as to give ample powers of superintendence, that is to say, powers of revision over proceedings of subordinate Courts. But the High Court has no power under the Code of Criminal Procedure to interfere in revision with an order of dismissal passed by a Presidency Magistrate. *Colville* v. *Kristo Kishore Bose, I. L. R., 26 Calc., 746,* dissented from. *Opoorba Kumar Sett* v. *Probod Kumari Dassi, 1 C. W. N., 49,* referred to. A Presidency Magistrate acting under s. 203 of the Criminal Procedure Code dismissed a complaint on the report of the police without examining the complaint and without finding that there was no sufficient ground for proceeding. The High Court acting under s. 15 of the Charter Act ordered a further inqury to be made into the matter of the complaint. CHAROOBALA DABEE *v.* BARENDRA NATH MOZAMDAR . **I. L. R., 27 Calc., 126 [3 C. W. N., 601**

OPOORBA KUMAR SETT *v.* PROBOD KUMARI DASSI **[1 C. W. N., 49**

4. CIVIL PROCEDURE CODE, S. 622.

146. ———— *Order made by High Court, Application to review.*—S. 622 of the Civil Procedure Code (XIV of 1882) does not apply to a case where the order, of which review is sought, is made by the High Court. The Court referred to in s. 622 is a Court other than the High Court. IN RE PREMJI TRIKUMDAS . **I. L. R., 17 Bom., 514**

147. ———— *Application where it was found an appeal lay—Application treated as appeal.*—Where an application was made for the exercise of its superintendence under s. 622 of the Civil Procedure Code, and the Court found that an appeal lay in the case, and that therefore it ought not to exercise such superintendence, the application was allowed to be treated as an appeal (the appeal from its value lying to the High Court and the application under s. 622 having been made before expiry of the time allowed for an appeal) on the proper Court-fees being paid. *Mahomed Wahiudin* v. *Hakiman, I. L. R., 25 Calc., 757,* referred to. SRIDHARAU SOMAYAJIPAD *v.* PURAMATHAN SOMAYAJIPAD . . **I. L. R., 23 Mad., 101**

148. ———— *Delay in moving Court.*—Where an auction-purchaser applied to the High Court to set aside, in the exercise of its powers under s. 622 of the Civil Procedure Code, an order setting aside a sale of immoveable property in execution of a decree, on the ground that such order was illegal, such application being made nearly seventeen months after the date of such order, the Court, having regard to the time that had elapsed before such application was made, refused to interfere. IN THE MATTER OF THE PETITION OF DURGA PRASAD **[I. L. R., 4 All., 154**

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

149. ———— On the question whether the High Court should refrain from exercising its powers under s. 622 by reason of the long time which had elapsed from the date of the decree,—*Held* that the petitioner was not fairly chargeable with laches. BALMAKUND *v.* SHEO JATAN LAL **[I. L. R., 6 All., 125**

150. ———— *Interference without application by a party to suit.*—A High Court can interfere under s. 622 of the Code of Civil Procedure without an application made to it by a party to the suit. ANTHONY *v.* DUPONT **[I. L. R., 4 Mad., 217**

151. ———— *Interference without application by party to suit—Reference from District Judge.*—It is only on the application of a party interested that the High Court can act as a Court of revision under s. 622 of the Civil Procedure Code. Accordingly, where a Munsif, considering that the Subordinate Judge had acted without jurisdiction in setting aside on appeal certain orders made by him, brought the matter to the knowledge of the District Judge, who took the same view, and the latter referred the case to the High Court under that section, it was held that the Court had no power to interfere. MAHOMED FOYEZ CHOWDHRY *v.* GOLUCK DASS . . . . . **7 C. L. R., 191**

152. ———— *Revision of order of lower Court—Power of High Court, on the application of a third party—Original order passed for delivery of possession to auction-purchaser—Dispossession of auction-purchaser by a claimant—Order for registration of name of claimant—Jurisdiction of Court to re-open execution proceedings.*—On a dispute arising between two contending parties, *A* and *B*, for registration of their names, a reference was made to the District Judge under s. 55 of the Land Registration Act, and a decision was passed in favour of *A*, the petitioner, who was put in possession of the property notwithstanding the objection of one *C*, the opposite party, that he held possession of the village as a permanent tenure-holder, having acquired a title by auction-purchase in execution of a mortgage decree. No steps were taken by *C* to obtain any recognition of his title from the District Judge, but some time after he applied to the Subordinate Judge for an amendment of his sale certificate, and having obtained an order of the Court re-opening the execution proceedings he applied for a fresh writ of possession in pursuance of the amended sale certificate. The Subordinate Judge issued a fresh writ of possession but *A* resisted the execution of that writ and possession, could not be given without complaining of the resistance to the Subordinate Judge. *C* applied for and obtained a fresh writ for possession. Before any action could be taken upon that writ, the petitioner presented an application to the Subordinate Judge representing his right in and possession of the property, but the Subordinate Judge declined to take any action upon it.

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S. 622 —*continued.*

Several resistances were made to the delivery of possession to the opposite party, and several successive *writs of possession were issued by the Subordinate* Judge *Held* that, under the above circumstances, *A* had sufficient interest in the orders complained [illegible]

[illegible]

653, referred to [illegible] dinate Judge to make the original order *for delivery* of possession over again, and the proceedings of the Subordinate Judge were bad *ab initio* GOLAM MAHAMMAD *v* SARODA MOHAN MOITRA [4 C W. N, 695

153 ———————— *Case where other* [illegible] *1827* [illegible] *Spec* [illegible] sion [illegible] of th [illegible] *for t* [illegible] the High Court should [illegible] jurisdiction under s 622 of the Code of Civil Procedure, or otherwise, on behalf of persons who feel themselves aggrieved by orders passed by Courts [illegible] which it appears the law has speci-

[illegible]

in a statute withdrawing cases under the statute from its control When such a statute has been made a *mere pretext, or has been wholly misapplied,* the case will be treated as one not really arising under the statute but on an evasion or perversion of the statute, and as such subject to the general control of the Court. (2) The Court, having called up the record or proceedings of a subordinate Court, [illegible] itself investigate the facts on which a jurisdiction [illegible]

[illegible]

may or may not [illegible] than obedience to the rules of procedure, or the

principles implied in them to such a material extent as to defeat the purpose of the law. (3) If the *Court finds that the external conditions of jurisdiction,* of investigation, and of command, have been satisfied by the inferior Court, it will not substitute its own appreciation of evidence, or its own judgment thereon, for the determination of the inferior Court in any matter committed by the Legislature *to the discretion of such Court* (4) Where an appeal is provided, the Court will not interfere by any peremptory order with the ordinary course of adjudication, save in cases wherein a defeat of the law and a grave wrong are manifest, and are irre-

[illegible]

Legislature that promptness and certainty should, in [illegible]

[illegible]

appreciation of evidence [illegible] law intrinsic to the inquiry and decision, it will

[illegible]

siderations of the importance of the particular case, or of the principle involved in it of delay on the part of an applicant, and of his merits with respect to the case in which the interference of the Court is sought Should other special causes appear for [illegible] weight is [illegible]

[illegible]

in good faith on matters that may reasonably be understood as within its lawful range. SHIVA NATHAJI *v* JOMA KASHINATH I. L. R., 7 Bom., 341

154 ———— *Cases in which appeal lies—"Decree"—Order rejecting memorandum of appeal* —An order rejecting a memorandum of appeal as barred by limitation is a "decree" within the meaning of s 2 of the Civil Procedure Code, it is therefore appealable, and not open to revision by the High Court under s. 622 of the Code GULAB RAI *v* MANGLI LAL I. L. R., 7 All., 42

155. ———————— *Civil Procedure Code, 1882, s 381—Order dismissing suit on failure to give security for costs —Held* by the Full Bench that an order passed under s. 381 of the Civil Procedure Code, dismissing a suit for failure by

the plaintiff to furnish security for costs as ordered, was the decree in the suit, and appealable as such, and consequently was not open to revision by the High Court under s. 622 of the Code. WILLIAMS *v.* BROWN . . . I. L. R., 8 All., 108

156. ———— *Order amending decree under s. 206, Civil Procedure Code, 1882—High Court's powers of revision.*—A District Judge, by an order passed under s. 206 of the Civil Procedure Code, altered a decree passed by his predecessor in the terms, "I dismiss the appeal," to read "I accept the appeal," on the ground that his predecessor had obviously meant to say that he accepted the appeal, and that the decree as it stood failed to give effect to the judgment. *Per* OLDFIELD, *J.*—That the order passed by the Judge under s. 206 could not be made the subject of revision by the High Court under s. 622 of the Civil Procedure Code, because there was an appeal from the amended decree, which became the decree in the suit, and superseded the original decree. *Per* MAHMOOD, *J.*—That an order passed under s. 206 of the Civil Procedure Code constituted an adjudication separate from that concluded by a decree under the Code passed after the parties had been heard and evidence taken, and that the order in the present case was therefore a separate adjudication, and was not appealable under s. 588. Also that, in saying that by "dismissed" his predecessor meant "decreed," the Judge had altered the decree in a manner not warranted by the terms of s. 206; that he had therefore exercised his jurisdiction "illegally and with material irregularity," within the meaning of s. 622 of the Code; and that the Court was consequently competent to revise his order. *Raghunath Das* v. *Raj Kumar, I. L. R., 2 All., 276,* referred to. SURTA *v.* GANGA . . . I. L. R., 7 All., 411

S. C. on appeal under the Letters Patent reversing the judgment of OLDFIELD, *J.*, and affirming that of MAHMOOD, *J.* SURTA *v.* GANGA [I. L. R., 7 All., 875

157. ———— *Civil Procedure Code, s. 206—Order amending decree in respect of Court-fee in pre-emption suit.*—An order as to costs contained in a decree for pre-emption directed that the pleader's fees should be calculated with reference to the value of the claim as set forth in the plaint. Subsequently the Court, professing to act under s. 206 of the Civil Procedure Code, passed an order directing the amendment of the decree by calculating the pleader's fees upon the actual value of the property. *Held per* OLDFIELD, *J.*—When an original decree is amended under s. 206 of the Civil Procedure Code, it as amended, is the decree in the suit; and an appeal therefore lies from it under the provisions of s. 540, when the validity of the amendment can be questioned. The matter of amending a decree under s. 206 does not by itself constitute a "case" within the meaning of s. 622 of the Civil Procedure Code, but forms part of the proceedings in the suit in which the decree is made. *Held* therefore, *per* OLDFIELD, *J.*, that where an original decree, which was appealable, was amended by the Court of first instance, under s. 206 of the Civil Procedure Code, the High Court had no power to revise such amendment under s. 622 of the Code. *Per* MAHMOOD, *J.*, *contra.* RAGHUNATH DAS *v.* RAJ KUMAR . . . I. L. R., 2 All., 276

Held on appeal under the Letters Patent that the alteration of the decree was improper, and was not an amendment of the kind authorized by s. 206 of the Civil Procedure Code. An order passed under s. 206 amending a decree is a separate adjudication and is not merely a part of the original decree, and such an order is not appealable under s. 588 of the Code. Such an order therefore can be revised by the High Court under s. 622. The judgment of OLDFIELD, *J.*, reversed, and that of MAHMOOD, *J.*, affirmed. RAGHUNATH DAS *v.* RAJ KUMAR [I. L. R., 7 All., 876

158. ———— *Civil Procedure Code, s. 206—Amendment of decree—Munsif acting illegally but in exercise of jurisdiction.*—The holder of a decree passed in a suit on a hypothecation-bond applied under the Civil Procedure Code, s. 206, to have the decree amended by bringing the description of the land contained therein into accordance with that contained in the hypothecation-bond, and the Court made an order accordingly. On a revision petition preferred under the Civil Procedure Code, s. 622, by the judgment-debtor,—*Held* (reversing the judgment of PARKER, *J.*, but on different reasoning by the two learned Judges constituting the Court) that the High Court had no power to interfere on revision. NARAYANASAMI *v.* NATESA [I. L. R., 16 Mad., 424

159. ———— *Civil Procedure Code, 1882, s. 44—Order refusing leave to join claims—Rejection of plaint.*—In a plaint filed in the Court of a Subordinate Judge, the plaintiff claimed to recover possession of a house, together with some grain which was stored in it. The plaintiff applied to the Subordinate Judge for leave, under s. 44, rule (*a*), of the Civil Procedure Code, to join the claim for grain with the claim for possession of the house. The Subordinate Judge refused leave, and returned the plaint, with directions that the plaintiff should institute two suits for recovery of the house and the grain, respectively, in the Court of the Munsif. *Held* that the Subordinate Judge's order was substantially an order rejecting the plaint, on the ground that the plaintiff had joined a cause of action with a suit for recovery of immoveable property; that, although this might have been a misapplication of s. 44, rule (*a*), of the Code, its effect was to reject the plaint; that such an order was a decree with reference to the definition in s. 2, and was appealable as such to the District Judge, and that therefore a second appeal lay in the case to the High Court, and that

SUPERINTENDENCE OF HIGH COURT—*continued*

4 CIVIL PROCEDURE CODE, S 622 —*continued*

Court was not competent to interfere in revision under s 622. BANDHAN SINGH *v* SOLHU

[I L R, 8 All, 191

160 — — *Case in which no appeal lies—Calling for record in case—Per*

case as a second appeal under Ch XLII of that Act *Per* STUART, *C J*—The High Court may, under that section, pass in such case any order, whether in regard to fact or law, as it thinks proper IN THE MATTER OF THE PETITION OF MUHAMMAD *v* HUSAIN I. L R, 3 All, 203

161 — *Case in which*

Held that, inasmuch as an appeal lay, under s 558 (cl 6), from the order of the Munsif the Court ought not to interfere under s 622 RAM KRISTO ROY *v* NAIK TARA DASS 12 C L R., 449

162. — *Interference of High Court where no appeal lies*—Where an appeal preferred to the District Court against an order refusing an application for execution of a decree for costs was allowed, the High Court on a second

KHATOON 6 C L R., 234

163. — *Objection to attachment of property—Objection allowed—Costs—Suit to establish right—Appeal—Refund of costs—Civil Procedure Code, 1882, ss 244, 280, 283*—An objection to the attachment of property attached in execution of a decree was allowed the decree-holder being ordered to pay the costs of the

reference to s 280 an appeal was barred by s 283 the Court therefore would interfere under s. 622 of the Civil Procedure Code. IN THE MATTER OF THE PETITION OF RAGHU NATH DAS RAGHU NATH DAS *v* BADRI PRASAD I. L R., 6 All, 21

place against the consent of one of the parties to the suit, and the appointment of the new arbitrators was not warranted by the provisions of s 510 of the Code

Procedure PUGARDIN RAVUTAN *v* MOIDINSA RAVUTAN I. L. R., 6 Mad., 414

Civil Procedure Code MANA VIKRAMA *v* MALLICHERRY KRISTNAN NAMBUDRI

[I L R., 3 Mad, 68

166 — *Arbitration—Order setting aside award for misconduct of arbitrator*—An order under s 521 of the Civil Procedure Code setting aside an award, made on a reference to arbitration in the course of a suit, under Ch XXXVIII *of the Code, on the ground of the arbitrator's* misconduct, is not subject to revision by the High Court in the exercise of the powers conferred on it by s 622 of the Code CHATTAR SINGH *v* LEKHRAJ SINGH I. L. R., 5 All, 293

167. — *Arbitration—*

cation was made for extension of time The award having been returned on 8th May the Court refused to give judgment in accordance with it under s 522 of the Code of Civil Procedure on the ground that it

[I. L. R, 9 Mad., 475

168 — *Arbitration—Award—Error of procedure—Relief refused on equitable grounds*—R M, party to a suit, having authorized his agent to conduct the suit, the agent consented to the case being referred to arbitration by

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

the Court. The arbitration was carried on to the knowledge and with the assent of *R M.* On an application by *R M,* under s. 622 of the Code of Civil Procedure, to set aside the award made by the arbitrators, on the grounds (1) that his pleader had not been authorized in writing, as required by s. 506 of the Code, to apply for arbitration; and (2) that he himself had not consented to the reference,—*Held* that, under the circumstances, *R M* was not entitled to relief. UNNIRAMAN *v.* CHATHAN

[I. L. R., 9 Mad., 451

169. —— *Arbitration—Award—Application to file award, Objection to—Decree on award, Finality of—Private arbitration—Revisional powers of High Court—Jurisdiction—Civil Procedure Code (Act XIV of 1882), ss. 520, 521, 525, 526, and 622.*—Certain disputes between parties were referred under a written agreement to an arbitrator, who, in due course, made his award. The plaintiff then applied to the Subordinate Judge to have the award filed in Court under the provisions of s. 525 of the Code of Civil Procedure. The defendants came in and objected to the award on the following amongst other grounds: (1) That the value of the property in suit was R500 only, and therefore that the application should have been made in the Munsif's Court and not in that of the Subordinate Judge. (2) That the agreement of submission was vague and indefinite, and did not clearly set out the matters in dispute. The Subordinate Judge overruled the objection without taking any evidence, and directed the award to be filed and a decree to be passed thereon. The plaintiff appealed. The defendants contended that no appeal lay, and that, if it did, it lay to the District Judge, and not to the High Court. *Held* that, assuming that on a proceeding under ss. 525 and 526 the Court has power to consider such objections as are mentioned in ss. 520 and 521, the above objections did not fall under either section, but that the Subordinate Judge, before entertaining the application, was bound to satisfy himself that he had jurisdiction to entertain it, and for that purpose to take evidence regarding the value of the property; and that, even if no appeal lay, the High Court could interfere under its revisional powers, because the Subordinate Judge had acted in the exercise of his jurisdiction illegally in assuming jurisdiction without taking such evidence. BINDESSURI PERSHAD SINGH *v.* JANKEE PERSHAD SINGH

[I. L. R., 16 Calc., 482

170. —— *Attachment—Power to set aside order for attachment by another Court.*—No Court, other than a Court of appeal or a High Court acting under s. 622 of the Code of Civil Procedure, can discharge an order of attachment issued by another Court. KOLASHERRI ILLATH NARANIAN *v.* KOLASHERRI ILLATH NILAKANDAN NAMBUDRI . . . I. L. R., 4 Mad., 131

171. —— *Commission, Order refusing issue of—Civil Procedure Code, ss. 130, 387—Interlocutory orders.*—Under s. 622 of the Code of Civil Procedure, interlocutory orders passed under s. 367, refusing applications for the issue of a commission to examine witnesses, or under s. 130, directing the production of documents, cannot be revised. IN RE NIZAM OF HYDERABAD

[I. L. R., 9 Mad., 256

172. —— *Decree, Construction of—Order misconstruing decree.*—Where in a case of the execution of a decree in which no second appeal lay to the High Court, the Appellate Court held, on the construction of the decree, that it awarded interest on the principal amount of the decree, the High Court, under s. 622 of Act X of 1877, holding that the Appellate Court had misconstrued the decree, and that the decree did not award such interest, modified the order of the Appellate Court accordingly. IN THE MATTER OF THE PETITION OF MUHAMMAD *v.* HUSAIN . . . . I. L. R., 3 All., 203

173. —— *Decree—Order reversing refusal to set aside ex-parte decree.*—After a decree had been made *ex-parte,* the defendant applied to have it set aside. The Subordinate Judge refused the application, but his order was reversed by the District Judge. *Held* that no appeal lay, nor would the Court interfere under s. 622 of the Civil Procedure Code. AUBINASH CHUNDER MOOKERJEE *v.* MARTIN . . . I. L. R., 8 Calc., 832

174. —— *Discretion, Interference with exercise of—Collector—Hereditary Offices Act (Bom.) III of 1874, s. 10—Collector's certificate.*—The Collector, when granting a certificate under s. 10 of the Bombay Hereditary Offices Act (III of 1874), exercises a judicial function, and is subject to the supervision of the High Court; but the High Court will not interfere with his discretion, unless there is violent misuse of authority, obvious bad faith, or reckless disregard or wanton perversion of the law on his part. COLLECTOR OF THANA *v.* BHASKAR MAHADEV SHETH

[I. L. R., 8 Bom., 264

175. —— *Suit for arrears of rent—Decision of Collector on appeal from Assistant Collector—N.-W. P. Rent Act (XII of 1881), ss. 183, 199.*—The High Court has no power to revise, under s. 622 of the Civil Procedure Code, an order passed by a Collector under s. 183 of the N.-W. P. Rent Act (XII of 1881) on appeal from an Assistant Collector of the second class. *Hur Pershad* v. *Lalu, 3 N. W., 60,* distinguished. RAM DAYAL *v.* RAMADHIN . I. L. R., 12 All., 198

176. —— *Discretion, Interference with exercise of—Refusal to grant certificate of sale under Madras Rent Recovery Act—Civil Procedure Code, 1882, s. 4.*—A sale of the tenant's interest in certain land having taken place under ss. 39 and 40 of the Rent Recovery Act, the Deputy Collector refused to issue a sale-certificate to the purchaser, on the ground that the sale

SUPERINTENDENCE OF HIGH COURT—*continued*

4. CIVIL PROCEDURE CODE, S 622—*continued*

had been irregularly conducted *Held* that the High Court had no power to review the proceedings of the Deputy Collector under s 622 of the Code of Civil Procedure VELI PERIYA MIRA RAVUTHAN *v* MOIDIN PADSHA RAVUTHAN [I. L. R., 9 Mad , 332

177 ——— *Madras Rent Recovery Act (Mad Act VIII of 1865), ss 10 and 76*—The defendant in a suit under the Madras Rent Recovery Act was evicted in pursuance of an order made under s 10 That order having been reversed on appeal, he applied to be replaced in possession, but the Sub Collector dismissed that application *Held* that the High Court could not interfere in revision under the Civil Procedure Code, s 622 APPANDAI *v* SRIHARI JOISHI [I. L. R., 16 Mad., 451

178. ——— *Madras Rent Recovery Act (Mad Act VIII of 1865), s 76*—Orders passed by a Collector under the Madras Rent Recovery Act are not open to revision under s 622 of the Civil Procedure Code *Velli Periya Mira* v *Moidin Padsha, I L R, 9 Mad, 332,* followed VENKATANARASIMHA NAIDU *v* SUBANNA [I L R., 17 Mad , 298

179. ——— *Discretion, Interference with exercise of—Admission by District*

could not interfere on revision VASUDEVA *v* CHINNASAMI . I. L R., 7 Mad , 584

180 ——— *Error in law—Civil Procedure Code, 1882, s 32—Interpleader suit, Application to be made a party to—Power of High Court on revision—Erroneous construction of Act*—A merely erroneous construction of the provisions of an Act is not a ground for relief under s. 622 of the Civil Procedure Code *M J* instituted an interpleader suit against two rival claimants, *R* and *A* in respect of a sum of R20 000 *R* subsequently claimed a portion of the money and applied to be made a party to the suit, but was opposed by *M J* and *R* The Subordinate Judge refused the application, on the ground that, though it was probably made under s 32 of the Civil Procedure

a jurisdiction vested in him by law RABBADA KHANUM *v* NOORJEHAN BEGUM *alias* DALIM SHAHIDA I. L. R., 13 Calc., 90

181. ——— *Error in law*—

the ground that such a suit would not lie, because it was based on an oral contract, and such contract could not be enforced by reason of the provisions of the Legal Practitioners' Act the High Court, under s 622 of the Code of Civil Procedure, reversed the decree of the Small Cause Court RAMA *v* KUNJI [I. L. R., 9 Mad., 375

182. ——— *Error of law—Application to bring decree into conformity with judgment*—A Small Cause Court rejected an application made under s 206 of the Code of Civil Procedure to bring a decree into conformity with the judgment, on the ground that a former application had been dismissed for default and the petitioner was bound to

JIVRAJI *v* PRAGJI I. L. R., 10 Mad., 51

183. ——— *Court acting without jurisdiction—Suit for rent entertained by Small Cause Court under erroneous impression it was due under a contract*—A Small Cause Court which had jurisdiction under Act XI of 1865 to entertain suits for rent only where the claim was founded on contract, erroneously assumed that a sub-tenant, by entering on land with notice that his lessor was bound to pay rent to the landlord, became liable by an implied contract to pay the rent to the landlord, and passed a decree against the sub tenant for the rent in arrears. *Held* that, under s 622 of the Code of Civil Procedure, the High Court had power to set aside the decree. *Amir Hassan Khan* v *Sheo Baksh Singh, I L R, 11 Calc, 6,* discussed and explained. MANISHA ERADI *v* SIYALI KOYA I. L. R., 11 Mad., 220

184. ——— *Material irre-*
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refused to deliver, on the ground that they had till the 31st May for delivery On the 15th May *L M & Co* failed, and then, but not before, plaintiffs informed the defendant that they had not had delivery from *L M & Co.*, and demanded it of him. The defendant failing to deliver, the plaintiffs sued for damages as of the 31st May The learned Judge of the Small Cause Court, on this statement of

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S 622 —*continued*

the Collector gave the purchaser a certificate of the sale Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in the certificate, and, upon the refusal of the Court to do so applied to the Collector to amend the certificate The amendment having been made as desired, the purchaser again applied to the Subordinate Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the application, holding that only the lesser amount had been sold in execution of the decree. The Court

the purchaser had a remedy by bringing a regular suit the matter did not fall within s 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision *Shivanathaji v Joma Kashinath, I L R, 7 Bom, 341,* and *Amir Hassan Khan v Sheo Baksh Singh, I L R, 11 Calc, 6,* referred to SUNDAR DAS *v* MANSA RAM . I. L. R., 7 All, 407

192 ——— *Jurisdiction, Interference with exercise of—Limitation* —A Court which admits an application to set aside a

action may therefore be made the subject of revision by the High Court under that section *Amir Hassan Khan v. Sheo Baksh Singh, I L R, 11 Calc, 6,* and *Magni Ram v. Jiwa Lall, I L R, 7 All, 336,* commented on by MAHMOOD, J *Per* MAHMOOD, J —The term "jurisdiction" as used by their Lordships of the Privy Council in *Amir Hassan Khan v Sheo Baksh Singh* must be understood in its broad legal sense signifying the power of administering justice according to the means which the law has provided, and subject to the limitations imposed by the law upon the judicial authority HAR PRASAD *v* JAFAR ALI I. L. R, 7 All., 345

193 ——— *Erroneous decision on point of limitation* —The fact that a Court having power to decide whether or not a certain matter was barred by limitation wrongly decided that it was not barred, and proceeded to deal with it, affords no ground for revision under s. 622 of the Code of Civil Procedure. *Amir Hassan Khan v Sheo Baksh Singh, I L R, 11 Calc, 6 L R, 11 I A, 237,* and *Sarman Lal v Khuban, I L R, 17 All, 422,* referred to. SUNDAR SINGH *v* DOBU SHANKAR . I. L. R., 20 All, 78

194 ——— [illegible]

SUPERINTENDENCE OF HIGH COURT—*continued*

4. CIVIL PROCEDURE CODE, S 622 —*continued*

Semble—In dealing with a case under s 622 the High Court can look into the evidence and itself investigate the facts KAILASH CHANDRA HALDAR *v* BISSONATH PARAMANIC 1 C. W. N, 67

195 ——— *Jurisdiction Question not relating to—Alleged errors in decision of suit for pre emption* —In a suit to enforce the right of pre emption in respect of a usufructuary mortgage of immoveable property, the plaintiffs alleged that the consideration money was less than that stated in the mortgage deed The Court of first instance gave the plaintiffs a decree for possession of the property, on payment of an amount less than that mentioned in the deed, and this decree was

tion whether, such grounds not being grounds of

196. ——— *Jurisdiction, Interference with exercise of—Second class Subordinate Judge—Subject matter of suit under R5 000 and within jurisdiction—Amount of decree with accumulations of interest exceeding R5,000—Application for execution—Second appeal* —The plaintiffs obtained a decree in the Court of a second class Subordinate Judge for a sum less than R5 000 which with accumulations of interest subsequently exceeded R5 000 The plaintiffs applied in execution to recover the total amount The application was rejected by the Subordinate Judge, on the ground that the Court had no jurisdiction under s 24 of Act XIV of 1869 On appeal the District Judge made an order confirming the decision of the Subordinate Judge The plaintiffs filed a second appeal in the High Court *Held* that no second appeal lay to the High Court from such an order; but as the Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by s 622 of the Civil Procedure Code (Act XIV of 1882) The subject matter of the suit was within the jurisdiction of the Subordinate Judge, and his jurisdiction continued, whatever might be the result of the suit in all such matters in the suit as were within his cognizance, amongst which were matters in execution in the suit. The mere circumstance that the amount

SUPERINTENDENCE OF
COURT—*continued.*

4. CIVIL PROCEDURE CODE,
—*continued.*

facts, and before evidence was gone int
the demages were assessable as of the
on which day it was admitted the marke
high or higher than the contract rate. T
on this ruling, without going into their
accepted judgment for nominal damag
out a rule for a new trial, on the grou
Judge was in error in assigning the
and not the 31st May, as the date
the question of damages. On the argu
rule, the Full Court decided against the p
on this point, which they did not dec
or the other, but on another point alt
that the plaintiffs ought to have give
notice of *L M & Co.*'s refusal to g
on the 25th April, and, not having done
call on the defendant to deliver. The p
moved the High Court under s. 622
Procedure Code (Act XIV of 1882)
the order of the Full Court of the Small
as one which at that stage of the proc

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S 622 —*continued*

the Collector gave the purchaser a certificate of the sale Upon this certificate the purchaser applied to the Subordinate Judge to give him possession of a larger amount of property than that specified in

Judge for possession of the amount claimed by him, and the Subordinate Judge again rejected the

the purchaser had a remedy by bringing a regular suit, the matter did not fall within s 622 of the Civil Procedure Code, so as to call for the interference of the High Court in revision *Shivanathaji v Joma Kashinath, I L R., 7 Bom, 341*, and *Amir Hassan Khan* v *Sheo Baksh Singh, I L R, 11 Calc, 6*, referred to SUNDAR DAS v MANSA RAM I. L. R., 7 All, 407

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193 ——— *Erroneous decision on point of limitation*—The fact that a Court having power to decide whether or not a certain matter was barred by limitation wrongly decided that it was not barred, and proceeded to deal with it, affords no ground for revision under s. 622 of the Code of Civil Procedure. *Amir Hassan Khan v. Sheo Baksh Singh, I L R, 11 Calc, 6 L R, 11 I A, 237*, and *Sarman Lal* v *Khuban, I L R, 17 All 422*, referred to. SUNDAR SINGH v DORU SHANKAR I. L. R., 20 All, 78

194 ———

interfere under s. 622 of the Civil Procedure Code

SUPERINTENDENCE OF HIGH COURT—*continued*

4. CIVIL PROCEDURE CODE, S 622 —*continued*

Semble—In dealing with a case under s 622 the High Court can look into the evidence and itself investigate the facts KAILASH CHANDRA HALDAR v BISSONATH PARAMANIC 1 C W. N, 67

195 ——— *Jurisdiction Question not relating to—Alleged errors in decision of suit for pre emption*—In a suit to enforce the right of pre-emption in respect of a usufructuary mortgage of immoveable property, the plaintiffs alleged that the consideration money was less than that stated in the mortgage-deed The Court of first instance gave the plaintiffs a decree for possession

as not paid (ii) Because the lower Court has not considered the evidence of the appellants (iii) Because the finding of the lower Court is based on conjecture' *Held*, on the question whether, such grounds not being grounds on which a second appeal is allowed by Ch XLII of the Civil Procedure Code, the appeal should not proceed rather under Ch XLVI, s 622 of that Code, that the appeal could not proceed under s 622 of the Civil Procedure Code in consequence of the decision of the Privy Council in *Amir Hassan Khan v. Sheo Baksh Singh, I L R, 11 Calc, 6*, that only questions relating to the jurisdiction of the Court could be entertained under that section MAGNI RAM v JIWA LAL I. L R, 7 All., 336

196. ——— *Jurisdiction, Interference with exercise of—Second class Subordinate Judge—Subject matter of suit under R5 000 and within jurisdiction—Amount of decree*

that the Court had no jurisdiction under s 24 of Act XIV of 1869 On appeal the District Judge made an order
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Subordinate Judge was wrong in refusing to exercise his jurisdiction, the High Court would give relief under the extraordinary jurisdiction conferred by s 622 of the Civil Procedure Code (Act XIV of 1882)

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

no cause of action against *V* or *S*, but, if at all, against *C*, and dismissed the suit as against *V*. The Subordinate Judge also held that he had no jurisdiction to interfere with the decree against *S*, and saw no reason to interfere with the decree against *C*. *S* appealed against this decree. *Held* that, even if *S* was not entitled to appeal in order to have the decree against him set aside, the error of the Subordinate Judge could be corrected under s. 622 of the Code of Civil Procedure by a direction to exercise the discretionary power given by s. 544 of the said Code. SESHADRI *v.* KRISHNAN . I. L. R., 8 Mad., 192

209. ——— *Jurisdiction, Interference with exercise of—Act XL of 1858 (Bengal Minors Act), s. 3—Refusal to admit person with certificate of administration to defend suit on behalf of minor.*—Under s. 3 of the Bengal Minors Act (XL of 1858), the Civil Court has no power to refuse to admit a person who has obtained a certificate of administration under the Act, to defend a suit on the minor's behalf, as guardian of such minor. Where a Subordinate Judge had so acted,—*Held* that the High Court has no power to revise his order under s. 622 of the Civil Procedure Code. BALDEO DAS *v.* GOBIND SHANKAR . I. L. R., 7 All., 914

210. ——— *Jurisdiction, Interference with exercise of—Decree, Refusal to amend.*—Where a Court improperly refused to amend a decree which was at variance with the judgment, —*Held* that in so acting the Court had acted in the exercise of its jurisdiction illegally and with material irregularity within the meaning of s. 622 of the Civil Procedure Code, and its order was consequently subject to revision under that section. BALMAKUND *v.* SHEOJATAN LAL . I. L. R., 6 All., 125

211. ——— *Jurisdiction, Interference with exercise of—Material irregularity affecting merits of case.*—The words "a material irregularity" in s. 622 of the Code of Civil Procedure include an irregularity of procedure materially affecting the merits of the case. An application of a section of the Code to a case to which it does not apply is a material irregularity within the meaning of the section. *Magni Ram* v. *Jiwa Lal, I. L. R., 7 All., 336,* observed on. SEW BUX BOGLA *v.* SHIB CHUNDER SEN . . I. L. R., 13 Calc., 225

212. ——— *Jurisdiction, Interference with exercise of—"Illegality"—"Material irregularity."*—A suit was instituted in the Court of a Munsif to recover from the defendants a sum of R49, being the amount due under a bond, and which the plaintiff alleged had been recovered on her account by one of the defendants from the obligor. The Munsif, being of opinion that the determination of the plaintiff's right to the bond involved the question of her heirship to the estate of a certain deceased person, and that consequently the case before him raised a question affecting the title to property exceeding R1,000 in value, held that he had no jurisdiction to entertain the suit, and accordingly returned the plaint for presentation to the proper Court under s. 57 of the Civil Procedure Code. *Held* by the Full Bench, that the Munsif had acted upon an erroneous view, as the only subject-matter of the suit was the R49; that he had consequently failed to exercise a jurisdiction vested in him, and the High Court was therefore competent to revise his order under s. 622 of the Civil Procedure Code. The result of *Amir Hassan* v. *Sheo Baksh Singh, I. L. R., 11 Calc., 6,* and *Magni Ram* v. *Jiwa Lal, I. L. R., 7 All., 336,* is that the questions to which s. 622 of the Civil Procedure Code applies are questions of jurisdiction only. The meaning of the decision of the Privy Council in the former case is that, if the Court has jurisdiction to hear and determine a suit, it has jurisdiction to hear and determine all questions which arise in it, either of fact or law, and that the High Court has no jurisdiction under s. 622 to inquire into the correctness of its view of the law, or the soundness of its findings as to facts; but that, when no appeal is provided, its decision on questions of both kinds is final. *Per* STRAIGHT and TYRRELL, *JJ.*—Clauses (*a*) and (*b*) of s. 584, specifying the grounds on which a second appeal lies to the High Court, embody what s. 622 refers to in the word "illegally," that is to say, to cases where the Court below has, in the exercise of its jurisdiction, come to a decision which is contrary to some specified law or usage having the force of law, or failed to determine some material issue of law or usage. Cl. (*c*) of s. 584 indicates the meaning of the words "material irregularity" in s. 622,—*i.e.*, some material irregularity in procedure, "which may possibly have produced error or defect in the decision of the case upon the merits." *Muhammad* v. *Husain, I. L. R., 3 All., 203,* referred to. BADAMI KUAR *v.* DINU RAI [I. L. R., 8 All., 111

213. ——— *Jurisdiction, Interference with exercise of—Meaning of "jurisdiction"—Amendment of decree—Civil Procedure Code, s. 206—Act XV of 1877, sch. II, No. 178.*—In execution of a decree for partition of immoveable property passed in 1872, a dispute arose as to the execution in reference to portion of the property, and in 1881 it was finally decided that the decree was defective in its description of the property, and therefore incapable of execution. In May 1885, on application by the decree-holder, the Court passed an order amending the decree, the amendment having reference to an arithmetical error. The judgment-debtor applied to the High Court for revision of this order, on the grounds that the amendment of the decree was barred by limitation, and that the decree itself being barred by limitation and finally pronounced to be incapable of execution, the Court had acted beyond its jurisdiction in amending it. *Held* that the application for revision must be rejected. *Per* OLDFIELD, *J.*, that the High Court had no power to entertain the application under s. 622 of the Civil Procedure Code with reference to the decision of the Privy Council in *Amir Hassan,*

SUPERINTENDENCE OF HIGH COURT—*continued*

4 CIVIL PROCEDURE CODE, S 622 —*continued.*

Khan v. Sheo Baksh Singh, I L R., 11 Calc, 6,

MOOD, J, that the Court was not precluded from

Jafar Ali, I. L R, 7 All, 345, referred to *Bhagwant Singh v Jagesher Singh, Weekly Notes, All, 1886, p. 57,* and *Abu Saib Khan v Hamid-un-nissa, Weekly Notes, All, 1886, p 39* dissented from. The meaning of the term "jurisdiction" used in s 622 of the Civil Procedure Code must not be confined to the territorial or pecuniary limits of the powers of a Court or to the nature of the class to which the case belongs It implies, in addition to questions of these kinds, the presence or absence of a positive authority or power conferred by the

wise, and where those tribunals have either exceeded or wrongly declined to exercise the authority, the power and the jurisdiction which the law confers upon them, or, under the pretence of exer-

and *Goluck Chunder Mustant v Ganga Narain Mustant, 20 W. R, 111,* referred to DHAN SINGH v BASANT SINGH I. L. R., 8 All., 519

214.——*Dismissal of suit without considering merits on technical ground—Suit by sole partner for partnership debt* —A

partner as co-plaintiff Held that it was the Judge's duty to hear and determine the suit which was brought by the person legally entitled to bring it

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S 622 —*continued*

alone in his Court, and in declining to entertain it on the merits he had failed to exercise his jurisdiction, and had acted with material irregularity within the meaning of s 622 of the Civil Procedure Code. *Muhammad Suleman Khan v Fatima, I L R, 9 All, 104,* and *Dhan Singh v Basant Singh, I L R., 8 All, 519,* referred to A suit should not be dismissed on merely technical grounds when the merits are proved and no injustice by surprise or otherwise will be done GOBIND PRASAD v CHANDAR SEKHAR

[I. L R, 9 All., 486

215.——*Failure to exercise jurisdiction* —Where a Subordinate Judge wrongly held that a suit was one of the nature contemplated by s. 539 of the Civil Procedure Code, and returned the plaint for presentation to the District Judge,—*Held* that the High Court had power, under s 622 of the Code, to interfere, the Subordinate Judge having *failed to exercise a jurisdiction* vested in him by law VISHVANATH GOVIND DESHMANE v RAMBHAT I L. R., 15 Bom, 148

216 ——*Jurisdiction, Interference with exercise of—Alleged irregularity by District Judge in decision of suits* —*A* and *B*, both of whom set up a claim to certain land, brought separate rent suits against the tenants In none of these suits did the amount claimed exceed R100.

in favour of *B*, and the Judge then decided the rent suits instituted by *B* in his favour, and dismissed the suits instituted by *A* *Held* that there was no such irregularity on the part of the District Judge in the course which he pursued of making his decision in the rent suit depend upon the decision in the suit to establish title as would justify the Court in interfering under s. 622 of the Civil Procedure Code. DOORGA NARAIN SEN v RAM LALL CHHUTAR

[I L R., 7 Calc, 330

S C DURGA NARAIN MISSER v GOBURDHUN GHOSE 9 C L. R., 86

217. ——*Jurisdiction, Interference with exercise of—Sale in execution of decree against estate of deceased—Suit against representatives of deceased husband's estate—Order releasing property from attachment* —In 1862 a

infant sons died and the widow was made a defendant as representing the estate of her deceased sons.

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

adopted son, whom she alleged to have adopted in 1874. The adopted son was not made a party to the suit: this objection was overruled, but the same objection was taken by the adopted son through his natural father as his guardian and next friend, and the Court released the 1/16ths share from attachment, and allowed the objection. Against this order some of the plaintiffs appealed, but pending the appeal another of the plaintiffs applied to the High Court, under s. 622 of the Code of Civil Procedure, to have the order set aside. The Court refused to interfere with the order, inasmuch as there appeared to be no material irregularity therein. SOTISH CHUNDER LAHIRY *v.* NIL COMUL LAHIRY

[I. L. R., 11 Calc., 45

218. ——— *Jurisdiction, Interference with exercise of—Civil Procedure Code, 1882, s. 30—Party added after decree.*—A Subordinate Judge having permitted the junior widow of a Hindu to be made a party to the proceedings in execution of a decree obtained by the senior widow against a debtor of their deceased husband, the High Court declined to interfere under s. 622 of the Code of Civil Procedure. LINGAMMAL *v.* CHINNA VENKATAMMAL . . . I. L. R., 6 Mad., 227

219. ——— *Jurisdiction, Interference with exercise of—Death of sole defendant—Application to add representative.*—In a suit for the recovery of land against a sole defendant, the latter died before the hearing. Sixty-three days after the death of the defendant the plaintiff applied to the Court to enter on the record the legal representative of the deceased defendant. On the 22nd November 1880 the Court rejected the application under the provisions of art. 171B of Act XV of 1877, and ordered the suit to abate. On the same day the plaintiff applied to the Court to set aside the order directing the suit to abate, but the application was also rejected on the 20th September 1881. On appeal to the High Court,—*Held* that no appeal lay against the latter order, and an appeal against the order of November 1880 was out of time, but that the High Court would take cognizance of the case under s. 622 of the Civil Procedure Code. BENODE MOHINI CHOWDHRAIN *v.* SHARAT CHUNDER DEY CHOWDHRY

[I. L. R., 8 Calc., 837
10 C. L. R., 449 : 12 C. L. R., 421

220. ——— *Transfer of interest pending suit—Lis pendens—Application to bring transferee upon the record—Civil Procedure Code, s. 244.*—A decree of the High Court, giving possession of certain shares in a bank to the plaintiff *R*, was reversed on appeal by the Privy Council. The defendant then applied to the Court of first instance to order restitution of the shares, which had been realized by the plaintiff. Upon being ordered to produce the shares, *R* made an application to the Court, professedly under s. 244 of the Civil Procedure Code, in which he alleged that, pending the appeal to the Privy Council, he had transferred the shares to *G*, his counsel in the case, who had failed to restore them, and he prayed "that the said person might be brought upon the record, and that execution for recovery of the said shares might be given against him." The Court passed an order upon this application, calling on *G* to show cause why he should not be called upon to restore the shares made over to him by *R*, and he thereupon filed an answer denying that he was the custodian of the shares, and alleging that he was their purchaser for value. The Court passed an order directing that *G*'s name should be placed on the record, so that the decree might be executed against him. *Held* that the application by *R* was meant to be and actually was one praying that, in respect of the scrip, restitution of which was being enforced against him, the person to whom some interest in it, more or less, had come pending the suit, might, in addition to himself, in so far as such interest had passed from him, be brought under the operation of the execution-proceedings; that this was an application under s. 372 of the Civil Procedure Code; and the order passed on it, being appealable under s. 588 (21), was not open to revision by the High Court under s. 622. RAYNOR *v.* MUSSOORIE BANK . I. L. R., 7 All., 681

221. ——— *Act XX of 1863, s. 18—Order refusing permission to sue.*—An order passed under s. 18 of Act XX of 1863, refusing leave to sue, is not appealable, nor, if the Judge has exercised his discretion, liable to revision under s. 622 of the Code of Civil Procedure. IN RE VENKATESWARA . . . . I. L. R., 10 Mad., 98

See ANONYMOUS . I. L. R., 10 Mad., 98 note

222. ——— *Revision of interlocutory order when appeal lies from final decree—Power of High Court.*—There is nothing in s. 622 of the Code which prevents the High Court from setting aside an interlocutory order if made without jurisdiction. The word "case" in that section is wide enough to include such an order, and the words "records of any case" include so much of the proceedings in any suit as relate to an interlocutory order. *Omrao Mirza* v. *Jones*, 12 C. L. R., 148; *Harsaran Singh* v. *Muhammad Raza*, *I. L. R.*, 4 *All.*, 91; *Chattar Singh* v. *Lekhraj Singh*, *I. L. R.*, 5 *All.*, 293; *Farid Ahmad* v. *Dulari Bibi*, *I. L. R.*, 5 *All.*, 233, dissented from. DHAPI *v.* RAM PERSHAD

[I. L. R., 14 Calc., 768

223. ——— *Application and purpose of s. 622—Civil Procedure Code (1882), s. 591—Interlocutory orders.*—An application under s. 622 of the Civil Procedure Code cannot be entertained in the case of those interlocutory orders against which, though no immediate appeal lies, a remedy is supplied by s. 591, which provides that they may be made a ground of objection in the appeal against the final decree. The purpose with which s. 622 was framed was to enable a party to a suit to get a decision or order of a lower Court rectified by the High Court

SUPERINTENDENCE OF HIGH COURT—*continued*

4. CIVIL PROCEDURE CODE, S 622 —*continued*

where there would otherwise be no remedy MOTILAL KASHIBHAI *v.* NANA . I. L. R., 18 Bom, 35

224 ———— — ———— *Interlocutory order—Rejection of application to appeal as a pauper* —An application for permission to appeal as a pauper was presented, not by the applicant personally, but by [illegible] pleader, and was on that ground rejected [illegible]

225 ———————— *Rejection of application to sue as a pauper—Refusal on ground of suit being barred* —An application to sue as a pauper having been refused, on the ground that the suit was barred by limitation, the High Court on revision permitted the applicant to renew his appli- [illegible] The Subordinate Judge [illegible] stating that [illegible] Before the [illegible] licant offered to pay [illegible] not actually [illegible] them at the time), and asked that the [illegible] the date [illegible] l and [illegible] case [illegible] ct X of 1877, that the circumsta[illegible] re not such as would justify the Court in interfering under that section RAM SAHAI SING *v.* MANIRAM [I L R, 5 Calc, 807: 6 C. L. R., 223

226. ——— — *Rejection of application to sue in formd pauperis*—" *Right to sue*"—*Limitation* —Where an application for leave [illegible] as a pauper was rejected with reference to [illegible]

Bench that the Court [illegible] its jurisdiction not having been exercised [illegible]

v Sheo Baksh Singh, I L R, [illegible] to *Per* MAHMOOD, J.—The word "case" as used in s 622 of the Civil Procedure Code should be under- [illegible] sense includ- [illegible]

Jagan Nath, [illegible] *Bhukneshri Dat v. Ridsadhis, Weekly Notes, All, p 69;* and *Sital Sahu v. Bachu Ram, Weekly Notes, All, 1882, p. 92,* referred to. Also *Per* MAHMOOD, J.—The provisions of s. 407 must be interpreted

SUPERINTENDENCE OF HIGH COURT—*continued.*

4 CIVIL PROCEDURE CODE, S 622 —*continued*

[illegible] as they operate in derogation of the [illegible] aid of the [illegible] tion under [illegible] is open [illegible] regularity, [illegible] the High [illegible] *L R, 7* [illegible] *4 Mad, 823,* referred to. CHATTARPAL [illegible] RAJA RAM [I L. R., 7 All, 661

227. ———————— *Res judicata, Erroneous decision on* —A wrong decision on a [illegible] *res judicata* is not a subject for the inter- [illegible] 622 of the Code [illegible] HARI BHIKAJI [illegible] *, 9 Bom, 432*

228 ———— — — — *High Court's power of revision—Res judicata—Jurisdiction, Meaning of the term* —The plaintiff sued the defendant to recover arrears of an annual allowance to which the plaintiff claimed to be entitled under a sanad dated 1846. The defendant in his defence raised certain points most of which he had raised in a previous suit brought against him by the plaintiff for the recovery of arrears of the same allowance, and which in that suit had been decided against him The lower Court held that the decision in the former suit operated as *res judicata*, and refused to allow the defendant to put forward any new matter which might and ought to have been urged as a defence in the former [illegible] plaintiff [illegible] under s 6 [illegible] of 1882). [illegible] *Vishvanath, I L R,* [illegible] even though wrong, of a question of *res judicata* was not a failure, or a cause of failure to exercise jurisdiction and did not warrant the interference of the High Court under s. 622 of the Civil Procedure Code AMBITRAV KRISHNA DESPANDE *v* BALKRISHNA GANESH AMBAPURKAR I L R., 11 Bom, 488

229. ———————— *Sale in execution of decree—Fraud—Setting aside order confirming sale* —The purchaser at a sale by public auction succeeded, by the exercise of fraud and [illegible] with the agent of the execution creditors [illegible]

order made by the Cou[illegible] the sale. SUBBAJI RAU *v* SRINIVASA RAU [I. L. R., 2 Mad., 264

230. ———— —— — — *Sale in execution of decree—Pre-emption—Civil Procedure Code, 1877, ss 310, 311—Locus standi of pre emptor in execution proceedings* —A person claiming to be a co-sharer in certain undivided immoveable property, a share of which had been sold in execution of a

decree, objected to the confirmation of the sale in favour of the person recorded as the auction-purchaser, and prayed that it might be confirmed in his favour, with reference to the provisions of s. 310 of the Civil Procedure Code. The Court disallowed the objection and confirmed the sale in favour of the auction-purchaser. The objector thereupon applied to the High Court for revision of the order of the lower Court under s. 622 of the Civil Procedure Code. *Held* that, having been allowed to object to the confirmation of the sale and treated as a party to the proceeding held therein, it was competent for him to make such application, notwithstanding that he was not one of the persons mentioned in s. 311 of the Code; that there being no appeal in the case, so far as he was concerned, the High Court was competent to entertain the application under s. 622 of the Code; but that, as he was not one of the persons who was competent to avail himself of the provisions of s. 311, he had no *locus standi* to justify his application to the lower Court, and the application for revision must therefore be dismissed. BISHESHAR KUAR *v.* HARI SINGH . . . . I. L. R., 5 All., 42

231. ———— *Distribution of assets—Application of decree-holder struck off.*—Where a rateable distribution was ordered among decree-holders whose applications had been struck off the file prior to realization of assets.—*Held* that it was open to the party injured to apply to the High Court under s. 622 to reverse the order. TIRUCHITTAMBALA CHETTI *v.* SESHAYYANGAR

[I. L. R., 4 Mad., 383

232. ———— *Execution-proceedings—Rateable distribution—Application for further execution—Notice.*—*A* and subsequently *B* obtained decrees against *X*, in execution of which the same land was attached, and *B* obtained an order for rateable distribution. Neither decree was satisfied. *A* then applied for attachment of other property, and the sale was fixed for 28th September. On 25th September *B* filed a petition for further attachment under ss. 250, 274, and also a petition for rateable distribution under s. 295 of the Code of Civil Procedure. The District Judge rejected the application for execution as being too late, and then the application under s. 295, because no application for execution was pending. *Held* on appeal that the petition for execution was wrongly rejected, but that the High Court could not, under s. 622 of the Code of Civil Procedure, revise the order rejecting the application under s. 295 for rateable distribution. VENKATARAMAN *v.* MAHALINGAYYAN

[I. L. R., 9 Mad., 508

233. ———— *Failure to exercise jurisdiction - Refusal of application for rateable distribution of sale-proceeds.*—A debtor against whom several decrees had been passed filed his petition in the Insolvency Court at Madras and the usual vesting order was made. One of the decree-holders had already attached property of the insolvent and had obtained an order for sale in a District Court, and another decree-holder now applied to the same Court in execution of his decrees, for attachment of other property, and for rateable distribution of the proceeds of sale to be held in execution of the attachment already made. The District Judge held that the vesting order was a bar to both these applications. *Held* that the order rejecting the application for rateable distribution was wrong, and that the High Court had power to set it aside on revision under s. 622 of the Civil Procedure Code, the Judge having failed to exercise a jurisdiction vested in him by law. VIRARAGHAVA *v.* PARASURAMA

[I. L. R., 15 Mad., 372

234. ———— *Sanction for prosecution—Act X of 1872 (Criminal Procedure Code), ss. 468, 469.*—The discretionary power of a Civil Court, before or against which an offence mentioned in s. 468 or 469 of Act X of 1872 is alleged to have been committed, to grant or withhold sanction to the prosecution for such offence, is not subject to revision by the High Court under s. 622 of Act X of 1877. IN THE MATTER OF THE PETITION OF MADHO PRASAD . . I. L. R., 3 All., 508

235. ———— *Power of revision over Small Cause Court, Calcutta—Alleged excess of jurisdiction by Small Cause Court—Trespass to immoveable property.*—The plaintiff brought a suit in the Calcutta Court of Small Causes to recover damages for trespass to certain immoveable property of which he proved he was in possession. The defendant contended that such a suit was one for the determination of a right to or interest in immoveable property, and was therefore not maintainable in the Small Cause Court. The Small Cause Court decided the case, and the High Court, on an application under s. 622, granted a rule to show cause why the judgment should not be set aside as being without jurisdiction. *Held*, on such application, that the Court had jurisdiction to entertain such a suit. PEARY MOHUN GHOSAUL *v.* HARRAN CHUNDER GANGOOLY . I. L. R., 11 Calc., 261

236. ———— *Civil Procedure Code, 1882, s. 43—Cause of action—Splitting a claim—Separate suits for rent due for successive years.*—Petitioners filed two suits in a Small Cause Court on the same day to recover rent due for two successive years under the same lease. The sum of the two claims exceeded the pecuniary limit of the Court's jurisdiction. The suit for the rent of the first year was dismissed under s. 43 of the Code of Civil Procedure, on the ground that the claim ought to have been included in the suit for the second year's rent. *Held*, in an application under s. 622 to the High Court to set aside the order, that although s. 43 did prevent the maintenance of the two suits, yet as the petitioners had no intention of abandoning either claim, the proper course was to allow them

SUPERINTENDENCE OF HIGH COURT—*continued*

14 CIVIL PROCEDURE CODE, S 622 —*continued*

to withdraw both suits and file a fresh suit in a competent Court ALAGU *v* ABDOOLA

I. L. R, 8 Mad., 147

237. ——— *Civil Procedure Code, s 25, Order under, for transfer of suit*—*Held* that an order under s 25 of the Civil Procedure Code, transferring a suit in which an appeal would lie from the decree made therein, was not subject to revision by the High Court under s 622 FARID AHMAD *v* DULARI BIBI I. L. R, 6 All., 233

MUHAMMAD SAFDAR HUSEN *v.* PURAN CHAND I. L. R, 20 All., 395

238 ——— *Court Fees Act, 1870, s 6, and sch II, art 17 (1)—Stamp—Valuation by subordinate Court—Practice—Civil Procedure Code (Act XIV of 1882), s. 622, and Bom Reg II of 1827, s 5*—A decision by a subordinate Court on a question of valuation, determining the amount

239. ——— *Order dismissing suit for insufficient stamp*—In a suit instituted upon a ten rupee stamp for an account, the removal of the original trustee and the appointment of a new trustee, where the value of the trust property was 5 lakhs of rupees the Court below directed that the stamp should be calculated upon the value of the trust property, and ordered that the deficiency should be made up within a particular time Before the time expired, a rule was obtained from the High Court under s 622 of the Civil Procedure Code to show cause why the order should not be set aside *Held* that the rule must be discharged, inasmuch as, if the suit had been dismissed on the expiration of the time limited on the ground that the relief was not properly valued, there would have been an appeal OMRAO MIRZA *v* JONES . 12 C. L. R., 148

240 ——— *Order made without jurisdiction under Act XIX of 1841, ss 3 and 4*—Where a District Court, purporting to act under s 4 of Act XIX of 1841, directed an inventory

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s. 622

without

jurisdiction ABDUL RAHIMAN *v* KUTTI AHMED I. L. R., 10 Mad., 68

241. ——— *Act XIX of 1841, ss 2, 3, 5, 15—Order of District Court on petition by Court of Wards*—On a petition presented by the Agent of the Court of Wards, a District Court made an order which purported to have been made under Act XIX of 1841, s 5 The conditions prescribed by ss. 3 and 4 were not shown to exist *Held* the order of the District Court was illegal, and was subject to revision under s. 622 of the Code of Civil Procedure PAPAMMA *v* COLLECTOR OF GODAVARI . I. L. R., 12 Mad., 341

242. ——— *Bengal Tenancy Act (VIII of 1885), ss 104, cl 2, 105, 106, 108—Rule 33 of the rules made under the Act—Jurisdiction—Record-of-right Civil Procedure Code (Act XIV of 1882), ss 108, 622—Order of Special Judge as to settlement of rents.*—The High Court has no jurisdiction either to entertain a second

243. ——— *Bengal Tenancy Act (VIII of 1885), s. 174 Deposit, Nature of—Jurisdiction—Application under s 622 of the Civil Procedure Code*—The deposit under s. 174 of the Tenancy Act must be of such a nature as to be at once payable to the parties, and a Court has no power to set aside a sale under that section unless the judgment-debtor has complied strictly with its provisions Where, therefore the Court accepted a deposit partly of cash and partly of a Government Promissory Note, and notwithstanding the objection of the auction purchaser gave the judgment-debtor the benefit of s 174 and set aside the sale, the High Court set aside such order under s 622 of the Civil Procedure Code RAHIM BUX *v* NUNDO LAL GOSSAMI I. L. R., 14 Calc., 321

244 ——— *Bengal Tenancy Act (VIII of 1885), s 188—Suit for rent—Co-sharers, Suit by—Joint undivided estate—Jurisdiction—Civil Procedure Code (Act XIV of 1882), s 622*—A District Judge, in deciding a rent suit, held that s 188 of the Bengal Tenancy Act prohibited the Court from entertaining the suit in the form in which it had been framed, and

I L R., 14 Calc, 201, and *Umesh Chunder Roy v Nashir Mulliek, I L R, 14 Calc, 203 note,* followed. *Amir Hassan Khan v Sheo Baksh Singh, I. L. R, 11 Calc., 6; L R, 11 I A, 237* distinguished JUGOBUNDU PATTUCK *v* JADU GHOSE ALKUSHI . . I. L. R., 15 Calc., 47

245 ——— *High Court's power of interference with order of Special Judge—Rules under Bengal Tenancy Act, Ch II, No 25—Power of Local Government to make the rule—Bengal Tenancy Act, ss 104, 108, and 189*—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl 2, from the Revenue Officer's decision making all or nearly

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of R10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code. *Held* by a Full Bench (1) that the Special Judge refused to exercise a jurisdiction vested in him by law; that the Court of Special Judge is a Court subordinate to the High Court; and the High Court had power to interfere under s 622 of the Civil Procedure Code. *Shewbarat Koer* v. *Nirpat Roy, I. L. R., 16 Calc., 596*, dissented from. (2) That the Local Government acted within the powers conferred by s. 189, cl. 1, of the Bengal Tenancy Act, in making rule 25 of Ch. VI of the Government rules under the Act, by which a landlord is authorized to join as defendants several tenants in one application for settlement of rents. UPADHYA THAKUR *v.* PERSIDH SINGH . . . I. L. R., 23 Calc., 723

246. ——— *Refraining from exercise of jurisdiction—Special Judge acting under Bengal Tenancy Act (VIII of 1885), ss. 106, 108—Boundary dispute—Decision of settlement officer acting as survey officer under Bengal Survey Act (Beng. Act V of 1875).*—Where the Special Judge under the Bengal Tenancy Act (VIII of 1885), in a case of a boundary dispute which had been tried and decided by a settlement officer acting as a survey officer under Part V of the Bengal Survey Act (V of 1875), dismissed an appeal on the ground that no appeal lay to him in such a case, the High Court declined to interfere under s. 622 of the Civil Procedure Code, being of opinion that the settlement officer had power under s. 189 (*b*) of the Bengal Tenancy Act, and rule 1, Ch. VI of the Government rules under the Tenancy Act, to act as he had done, and that therefore, in holding that no appeal lay to him, the Special Judge had not refrained from exercising any jurisdiction which he ought to have exercised. IRSHAD ALI CHOWDHRY *v.* KANTA PERSHAD HAZAREE . . I. L. R., 21 Calc., 935

247. ——— *Special Judge, Discretion of—Dekkan Agriculturists' Relief Act (XVII of 1879)—Finding of fact.*—When the Special Judge under the Dekkan Agriculturists' Relief Act (XVII of 1879) entertains a clear opinion that the findings of the Subordinate Judge on the questions of fact are erroneous, and exercises his discretion in setting aside the decree, the High Court will not, in its extraordinary jurisdiction, interfere with that discretion except under most exceptional circumstances. RAYACHAND MAYACHAND *v.* RAHIMBHAI . . . . I. L. R., 18 Bom., 347

248. ——— *Revisionary power of the Special Judge—Cases in which failure of justice appears to have taken place—Jurisdiction—Discretion of Court—Dekkan Agriculturists' Relief Act, s. 53.*—S. 622 of the Civil Procedure Code (Act XIV of 1882) gives to the High Court jurisdiction to interfere only where the lower Court acts without jurisdiction or has exercised its jurisdiction "illegally or with material irregularity." Under s. 53 of the Dekkan Agriculturists' Relief Act (XVII of 1879), the Special Judge has a revisionary power in all cases where a failure of justice appears to have taken place. It is for him to decide whether the finding on a question of fact by a Subordinate Judge is of that nature, and in doing so he is entirely within his jurisdiction. *Shidhu* v. *Bali, I. L. R., 15 Bom., 180*, dissented from. GURU BASAYA *v.* CHANMALAPPA

I. L. R., 19 Bom., 286

249. ——— *Mamlatdars' Courts Act (Bom. Act III of 1876), s. 15, cl. (a), sub-cls. (1) and (2), s. 18—Execution of decree for possession against a third party—Jurisdiction of Mamlatdar.*—*A* obtained an order in a Mamlatdar's Court against *G* for possession of a house, and in execution *N*, who was found in possession of the house and who was reported by the village officers as holding possession for *G*, was evicted by order of the Mamlatdar. *N* then applied to the High Court. *Held* that the Mamlatdar's order was, strictly speaking, beyond his authority, but that, as *N*'s petition to the High Court contained no distinct denial that he was occupying merely on behalf of the defendant, the High Court would not interfere in its extraordinary jurisdiction. NATHEKHA *v.* ABDUL ALLI . . . . I. L. R., 18 Bom., 449

250. ——— *Irregular decree of Mamlatdar made by consent of parties—Subsequent refusal by Mamlatdar to order execution of decree—Questions of fact.*—The applicant brought two possessory suits against the opponent in the Mamlatdar's Court for the recovery of certain pieces of land. By consent, decrees were passed in these suits, that unless the opponent paid a certain sum of money to the applicant within two months, the latter should get possession. After the expiration of two months, the applicant, alleging that the money had not been paid as agreed, applied for execution of the decrees. The Mamlatdar found that the money had been tendered to the applicant, but had been wrongfully refused by him. He ordered execution to issue as to costs, but declined to make any order as to possession. The applicant, thereupon applied to the High Court in its extraordinary jurisdiction, and alleged that the money had not been duly tendered. *Held* that the decrees were such as the Mamlatdar could not legally make under the provisions of the Mamlatdars' Act (Bombay Act III of 1876), and the consent of parties could not give him power to do so. *Held* also that the High Court would not go into the question as to the due tender of the money. It was not open to the High Court, in the exercise of its extraordinary jurisdiction, to go into this question of fact, nor would it be proper to further the execution of an irregular decree, especially as the applicant had a clear remedy

SUPERINTENDENCE OF HIGH COURT—*continued*

4 CIVIL PROCEDURE CODE, S. 622 —*continued*

by suit RAMRAO TATYAJI PATIL *v* BABAJI DHONDJI BIBVE . I L. R., 20 Bom., 630

251 ——————— *Mamlatdar, Jurisdiction of*—The plaintiff sued in a Mamlatdar's Court for possession of certain lands, alleging that the defendants held them under a lease, the time of which had expired The Mamlatdar found the execution of the lease proved, but held it to be

matter was not one for the extraordinary jurisdiction

KULKARNI *v* NANA I L. R., 21 Bom , 731

252. ——————— *Dispossession of a third person not a party to suit—Remedy of person so dispossessed—Mamlatdar acting without jurisdiction*—*G* got a decree for possession against *P* in a Mamlatdar's Court In execution the Mamlatdar directed the ouster of *P*, who was in possession, and who was not a party to the decree *Held* that the

253. ——————— *Order of District Judge acting under Bombay District Municipal Act (Bom Act II of 1884), s. 23—Application to set aside a Municipal election—Order made as to costs—"Court," Meaning of.*—A District Judge acting under s 23 of the Bombay District Municipal Act (Bombay Act II of 1884) is not a "Court" within the meaning of

ROJI . . . I. L. R., 21 Bom , 279

254. ——————— *Revision—Illegality in exercise of jurisdiction—Judge's duty to decide secundum allegata et probata.*—The plaintiffs sued upon two bonds executed by the defendant in their father's favour, one for R200 and the other for R99 15 annas. The defendant in his written statement, as well as in his deposition, admitted execution of the bonds in question but pleaded non receipt of the consideration. The Subordinate Judge held that the bond for R200 was not proved, but awarded the claim upon the other bond. On appeal, one of the issues raised by the Assistant Judge was—are the bonds in suit proved? He held that the plaintiffs had failed to prove execution of the bonds, and dis-

that could be tried in the present case was non receipt of consideration GORAKH BABAJI *v* VITHAL NARAYAN JOSHI [I. L. R., 11 Bom., 435

255 ——————— *Passing decree*

that the defendant was bound to prove that he had taken such care of the horse as a man of ordinary prudence would under similar circumstances have

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

shifted by the explanation which he gave and which was neither contradicated nor *primâ facie* improbable; and that the decree of the lower Court, being unsupported by any proof, and based on speculation and assumption, was one which that Court had no jurisdiction to pass, and should consequently be set aside in revision under s. 622 of the Civil Procedure Code. *Per* BRODHURST, *J.*, that as the decree was not only unsupported by proof, but opposed to the evidence on the record, the lower Court had "acted in the exercise of its jurisdiction illegally," within the meaning of s. 622. *Collins* v. *Bennett, 46 New York Rep.*; *Byrne* v. *Boadle, 2 H. and C., 722*; *Gee* v. *Metropolitan Railway Company, L. R., 8 Q. B., 161*; *Scott* v. *London Dock Company, 3 H. & C. 596*; *Manzoni* v. *Douglas, 6 Q. B. D., 145*; *Cotton* v. *Wood, 8 C. B. N. S., 569*; *Darey* v. *London and South Western Railway Company, 12 Q. B. D., 70*; and *Hammack* v. *White, 11 C. B. N. S., 588*, referred to. SHIELDS *v.* WILKINSON

[I. L. R., 9 All., 398

256. ———— *Civil Procedure Code, 1882, s. 516—Material irregularity—Omission to give notice of proceedings.*—A District Munsif passed a decree in the terms of an award without giving notice of the filing of the award under s. 516 of the Code of Civil Procedure. *Held* that the District Munsif acted with material irregularity within the meaning of s. 622 of the Code of Civil Procedure. RANGASAMI *v.* MUTTUSAMI

[I. L. R., 11 Mad., 144

257. ———— *Civil Procedure Code (1882), s. 156—Decree passed upon an award filed in Court without notice of its filing having been sent to the parties.*—*Held* that it was a good ground for revision of a decree based upon an award filed in Court that no notice of the filing of the award was given by the Court to the parties as required by s. 516 of the Code of Civil Procedure, even though the applicant in revision might have received information *aliunde* that the award had been filed. *Rangasami* v. *Muttusami, I. L. R., 11 Mad., 144,* followed. CHATARBUJ DAS *v.* GANESH RAM

[I. L. R., 20 All., 474

258. ———— *Error of law—Material irregularity—Personal decree against minors for debt of deceased Hindu father.*—In a suit to recover a debt incurred by the deceased father of a Hindu family, the District Judge gave a personal decree against the sons of the debtor, of whom two were minors. *Held* that, under s. 622 of the Code of Civil Procedure, the decree against the minors should be reversed, but that the Court has no power to revise the decree against the other defendants. BHASHYAM *v.* JAYARAM . . . I. L. R., 11 Mad., 303

259. ———— *Civil Procedure Code, s. 373—Leave given by District Court on appeal to withdraw suit—Material irregularity.*—A District Munsif having dismissed a suit, plaintiff appealed to the District Court, and at the same time applied to the Court to allow him to withdraw his suit with permission to bring a fresh suit on the same cause of action. The District Court granted the application without assigning any reasons for its order. *Held*, under s. 622 of the Code of Civil Procedure, that the District Court had acted with material irregularity. TIRUPATI *v.* MUTTA . I. L. R., 11 Mad., 322

260. ———— *Immoveable property—Right of fishery—Possession—Dispossession—Specific Relief Act, I of 1877, s 9—Civil Procedure Code (Act XIV of 1882), ss. 30 and 622—Objection under s. 30 where suit is under s. 9 of Specific Relief Act.*—The plaintiffs were fishermen belonging to the village of *N.* They claim in this suit for themselves and the other fishermen of their village the exclusive right of fishing in the Nagothna Creek between high and low-water marks, within certain limits set forth in the plaint, and, under s. 9 of the Specific Relief Act, I of 1877, they sought to recover possession of that right from the defendants, who, they alleged, had dispossessed them within six months before this suit was filed. The Subordinate Judge held that they had established their right, and made an order directing that possession should be restored to them. The defendants then applied to the High Court under its extraordinary jurisdiction, contending that the order made by the first Court was beyond its jurisdiction, the right of fishing not being immoveable property within the meaning of that section. *Held* that the first Court did not act without jurisdiction, the right claim coming within the denomination of immoveable property. It was contended by the defendants that the plaintiffs, who claimed on behalf of other fishermen of the village, should have proceeded under s. 30 of the Civil Procedure Code (Act XIV of 1882). *Held* that the objection was a good one; but, inasmuch as it was still open to the defendants to establish their right by a regular suit, the irregularity in the present suit was not such as to call for the exercise of the powers of the High Court under s. 622 of the Civil Procedure Code. BHUNDAL PANDA *v.* PANDOL POS PATIL

[I. L. R., 12 Bom., 221

261. ———— *Jurisdiction, Presumption of—Maxim, omnia præsumuntur rite et solemniter esse acta—Civil Procedure Code, ss. 103, 283, 647.*—The consideration of an objection under s. 278 of the Civil Procedure Code, having first been entertained and adjourned by an Additional Subordinate Judge, subsequently came before the Subordinate Judge, who struck off the case for default. No order under s. 25 transferring the case to the Subordinate Judge was on the record, nor was it otherwise shown how he obtained jurisdiction to deal with it. *Held* that the High Court, in the exercise of its revisional powers under s. 622 of the Code, should not presume that the Subordinate Judge had taken up the case without jurisdiction: that the proper remedy of the petitioner was an application under s. 103,

SUPERINTENDENCE OF HIGH COURT—*continued*

4 CIVIL PROCEDURE CODE, S 622 —*continued*

read with s 647, or a suit under s 283, and that the High Court should not interfere in revision SHEO PRASAD SINGH v KASTURA KUAR

[I. L. R., 10 All, 119

262. —— —— —— *Limitation—High Court's revisional powers—Material irregularity* —On the 29th November 1886 this suit was filed on a bond dated the 29th November 1881, pay-

(Act XIV of 1882) *Held*, reversing the decision of the Subordinate Judge, that the suit was not barred by time the cause of action having accrued on the 29th November 1883, that is, the day of the month corresponding with the day on which the bond was dated *Held* further that, the decision of the Subordinate Judge being palpably wrong and illegal, the High Court had jurisdiction to exercise its revisional powers under s 622 of the Code of Civil Procedure (Act XIV of 1882) Where a Court with a full and correct apprehension of the questions which it is necessary for it to decide in any case, errs, in law or in fact, in its decision of any such questions with which it has jurisdiction to deal, its

remedy there may be, in the Bombay Presidency, under cl 2 of s 5 of Regulation II of 1827 But it is otherwise in any case where the Court, having a mistaken and wrong apprehension of the questions at issue proceeds to determine an issue, which does not really arise in the case, and bases its decision of the case on its determination of that issue If it does so, it acts with material irregularity in the exercise of its jurisdiction VENKUBAI v LAKSHMAN VENKOBA KHOT I. L. R., 12 Bom., 617

263. —— *Orders in pauper suit—Civil Procedure Code, s 407* —All orders passed under s 407 of the Code of Civil Procedure are not excluded from the exercise of the revisional powers of the High Court under s. 622 of the Code.

whether the requirements of the law have been duly and properly obeyed by the Court whose order is the subject of revision, and whether the irregularity as to failure or exercise of jurisdiction is such as to justify interference with the order MUHAMMAD HUSAIN v AJUDHIA PRASAD

[I. L. R, 10 All., 467

264. —— *Pauper suit—Costs of plaintiff—Right of appeal—Decree omitting to order plaintiff to pay Court-fees—Power of Collector to apply under the extraordinary jurisdiction of High Court—Amendment of decree* —The plaintiff's suit *in formâ pauperis* was rejected by the Subordinate Judge The decree, however, omitted to order the recovery from the plaintiff of the Court-fees payable in the plaint. The Collector applied to the High Court under its extraordinary jurisdiction for the rectification of the decree It

have been

Collector

jurisdiction

Collector of Ratnagiri v *Janardan, I L R, 6 Bom, 590*, that no appeal by Government would lie in the case, and that, in the exercise of its extraordinary

265 *Civil Procedure Code, ss 494, 588 Appeal against order for issue of notice under s 494—Revision by High Court of an order purporting to be made on appeal from such an order* —A petition praying for a temporary injunction in a suit was presented by the plaintiff in a subordinate Court The Judge refused to pass orders on it without hearing the defendants and ordered notice to issue to them The plaintiff appealed to the District Judge who granted the injunction prayed for *Held* that no appeal lay from the subordinate Court, and that the District Judge had purported to exercise a jurisdiction not vested in him by law LUIS v LUIS

[I. L. R., 12 Mad., 186

266. —— *Civil Procedure Code (Act XIV of 1882), s 412—Dismissal of suit in formâ pauperis without trial—Liability of plaintiff for Court-fee* A plaintiff who sues *in formâ pauperis* is liable to pay the stamp duty if

267. —— *Civil Procedure Code, s 269—Order on appeal affirming order granting application for review of judgment.*—The High Court will not in the exercise of its revisional powers under s 622 of the Code, interfere with an order dismissing an appeal from an order under s. 629, inasmuch as there is a remedy by way of appeal from the final decree at the re-hearing GOPAL DAS v ALAF KHAN

[I. L. R., 11 All., 383

268. —— *Pauper suit—Judge applying to suit a course of inquiry not applicable—Civil Procedure Code (1882), ss 407,*

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622 —*continued.*

284. ——— *Land Acquisition Act (X of 1870), ss. 3, 24, and 25 Exercise of jurisdiction by Judge under the Act—"Material irregularity"—Mistake in regard to the principle of calculation of the value of the land acquired.*—If a Judge and assessors, sitting to determine the amount of compensation to be awarded for land acquired under the Land Acquisition Act of 1870, have refused to take into consideration any of the matters prescribed by s. 24 of that Act, or have improperly taken into consideration any of the matters prohibited by s. 25 thereof, such procedure would amount to material irregularity in the exercise of their jurisdiction, and would justify the intervention of the High Court under s. 622 of the Code of Civil Procedure. Having regard to the definition of "land" contained in s. 3 of Act X of 1876, there is nothing illegal in a Judge taking into account the value of works on the land which make it suitable for a salt factory; and even if, in making his estimate of the market value of the land, he took into consideration the price paid for neighbouring pans, and was in error in so doing, his mistake would be only one concerning the principles of valuation, and not an irregularity in the exercise of jurisdiction. JOSEPH *v.* SALT CO . . . I. L. R., 17 Mad., 371

285. ——— *Power to call for record of cases not appealable to High Court—When a Court can be said "to have acted in the exercise of its jurisdiction illegally or with material irregularity."*—A District Judge disposed of some suits on a point taken by himself on appeal, without affording the parties an opportunity of proving what was necessary to meet the point, and admitted other appeals after they had become time-barred. *Held* by the majority of the Full Bench that where a subordinate Court, having applied its mind to a question of law or procedure, arrives at an erroneous decision, such decision is *not by itself* any ground for the exercise by a High Court of the powers given by s. 622 of the Code of Civil Procedure. *Amir Hassan Khan v. Sheo Baksh Singh, I. L. R., 11 Calc., 6,* followed. *Held* further (BEST and DAVIES, JJ., dissenting) that the case contemplated by the words "act . . . illegally or with material irregularity" in s. 622 of the Code of Civil Procedure is that of a perverse decision on a question of law or procedure, a decision being perverse where it is a conscious departure from some rule of law or procedure. *Per* BEST, *J.*—The words in question of s. 622 of the Code are applicable to illegalities or irregularities which are the result merely of ignorance of law or carelessness, and the disposal of a suit on a point taken by the Court itself on appeal, without affording the parties an opportunity of proving what is necessary to meet the point, is an irregularity in procedure within the meaning of s. 622; and that the inadvertent admission of an appeal that is time-barred is an illegality in procedure within the meaning of that section. *Per* DAVIES, *J.*—The clause of s. 622 in question is applicable only to errors of procedure, and it is not in every case that the High Court would, in the exercise of the discretionary power granted it by the section, interfere in revision. The interference would be confined to cases where the illegality or irregularity was such as had occasioned or might occasion a substantial failure of justice, as in the present case. KRISTAMMA NAIDU *v.* CHAPA NAIDU [I. L. R., 17 Mad., 410

286. ——— *Error of procedure—Mode of applying powers of superintendence of Court under s. 622.*—The words "acting with material irregularity" in the third clause of s. 622, Civil Procedure Code, imply only the committing of an error of procedure, but "acting illegally" does not mean the same thing. The third clause of s. 622, Civil Procedure Code, is intended to authorize the High Court to interfere and correct gross and palpable errors of subordinate Courts so as to prevent grave injustice in non-appealable cases, and the question whether any case comes under the clause has to be determined with reference to the grossness and palpableness of the error complained of, and to the gravity of the injustice resulting from it. *Kristamma Naidu v. Chapa Naidu, I. L. R., 17 Mad., 410,* dissented from. *Amir Hassan Khan v. Sheo Baksh Singh, I. L. R., 11 Calc., 6,* explained. BHAGWAN RAMANUJ DAS *v.* KHETTER MONI DASSI [1 C. W. N., 617

287. ——— *Succession Certificate Act (VII of 1889), s. 9—Order granting certificate on the applicant's furnishing security—Discretion of Court.*—The widow of a deceased person having applied for a certificate under the Succession Certificate Act (VII of 1889), the Judge ordered the certificate to issue on the applicant's furnishing security under s. 9 of the Act. *Held* that such an order was within the discretion of the Judge, and there being shown to be nothing improper in the exercise by the Judge of his jurisdiction, the Court refused to interfere to set the order for security aside. *Mhalsabai v. Vithoba Khandappa Gulbe, 7 Bom., Ap., 26,* referred to. BAI DEVKORE *v.* LALCHAND JIVANDAS [I. L. R., 18 Bom., 790

288. ——— *Decision of Appellate Court as to jurisdiction of lower Court—Reversal of order rejecting plaint.*—Where a Court of first instance having ordered a plaint presented to it to be returned to the proper Court under s. 57, cl. (*a*), Civil Procedure Code, the Court of Appeal, acting under s. 588, cl. (6), Civil Procedure Code, set aside such order and directed the original Court to hear the cause,—*Held* that the High Court had no jurisdiction to interfere with such appellate order under s. 622, Civil Procedure Code, for it could not be said that the lower Appellate Court acted in the exercise of its jurisdiction illegally or with material irregularity simply because its decision as to the jurisdiction of the first Court to entertain the suit was erroneous in

SUPERINTENDENCE OF HIGH COURT—*continued*

4 CIVIL PROCEDURE CODE, S 622 —*continued*

... 1 C W N, 617, referred to *Amir Hassan Khan v. Sheo Baksh, I L R, 11 Calc, 6,* explained *Kristamma Naidu v. Chapa Naidu, I L R, 17 Mad, 410* disapproved MATHURA NATH SARKAR *v.* UMESH CHANDRA SARKAR [1 C. W. N., 626

289 ——— ——— *Error in dis* ...

... the petitioner had not obtained satisfaction of her ...

... Procedure Code, to divide the assets, and if, with a ...

Held further that a mere mistake in law by a lower Court does not bring a case under s 622, Civil Procedure Code *Amir Hassan Khan v. Sheo Baksh Singh, I L R 11 Calc, 6,* followed *Brij Mohun Thakur v. Rai Uma Nath Chowdhry, I L R, 20 Calc, 8,* referred to *Held* (by BANERJEE J) that the third clause of s 622, *viz*, "acted illegally or with material irregularity," is ...

SUPERINTENDENCE OF HIGH COURT—*continued*

4 CIVIL PROCEDURE CODE S 622 —*continued.*

desirable that the High Court should interfere with them *Held* that assuming that the lower Court had no jurisdiction to enter into the question of the *bonâ fides* of the decree the order of the lower Court might stand upon the other two grounds for the error, if any does not come within the scope of this clause and having regard to the fact that s 295, Civil Procedure Code, provides a remedy by a regular ...

Baksh Sing I L R 11 Calc 6, explained *Badami Koer v. Dinu Rai, I L R, 8 All, 111* dissented from *Kristamma Naidu v. Chapa Naidu I L R, 17 Mad 410* disapproved. RAGHU NATH GUJRATI *v.* RAI CHATRAPUT SINGH 1 C W N, 633

290 ——— *Civil Procedure Code, s 283 High Court's powers of revision—Remedy by suit* —The High Court will not exercise its revisional jurisdiction so long as there is any other remedy open to the applicant Where a Subordinate Judge disallowed an application for the release of certain property which had been attached before judgment *Held* that, there being a remedy by suit ...

All, 383, referred to GUISE *v.* JAISRAJ [I. L. R., 15 All., 405

291 ——— *Exercise of power of High Court under s 622 of the Civil Procedure Code 1882, where there is no appeal—Order refusing to make person party to oppose probate* —Where a Hindu died leaving a widow and also a daughter (who alleged collusion between the widow and one of the executors applying for probate of an alleged will) the daughter was held to have sufficient *interest to entitle her to be made a party to the* application and to oppose the grant of probate, and the Judge having refused to make her a party, the Court finding that no appeal lay from that order thought it a proper case for the exercise of its power under s 622 of the Civil Procedure Code and remanded the case for trial as a contested application KHETTRAMONI DASI *v.* SHYAMA CHURN KUNDU [I. L. R., 21 Calc., 539

292 ——— *Order refusing to amend a clerical error in the form of probate—Probate and Administration Act (V of 1881), s 86—Succession Act (X of 1865), s 263* Where there was a clerical error in the form of probate granted and the Judicial Commissioner refused to amend it on the ground that the probate was granted by his predecessor, it was held that though there was no appeal from such an order either under s. 86 of the Probate and Administration Act (V of 1881) or s 263 of the Succession Act (X of 1865), yet the High Court might deal with the case under s 622 of

SUPERINTENDENCE OF HIGH COURT—*continued.*

4. CIVIL PROCEDURE CODE, S. 622—*continued.*

the Civil Procedure Code, and set aside the order. *Khettramoni Dasi* v. *Shyama Churn Kundu, I. L. R., 21 Calc.,* 539, followed GERINDRA KUMAR DAS GUPTA *v.* RAJESWARI ROY . I. L. R., 27 Calc., 5

293 ——————— *Exercise of revisional powers when there was remedy by separate suit —Right of suit—Executing Court delivering possession of property not specified in sale-certificate.*—In execution of a decree against several joint judgment-debtors, certain immoveable property was proclaimed for sale. The sale proclamation described the property as so many biswas and biswansis in certain villages amounting to a certain area. The judgment-debtors possessed property in those villages over and above that sought to be sold. The property as above described was sold, and certificates of sale were granted which in terms followed the description contained in the proclamation of sale. The decree-holder purchased the property so sold and applied for possession thereof, but in their application they inserted a detail of the specific shares of property held by the several judgment-debtors over which they prayed for possession. The Court executing the decree went into the question of the specification of shares and ordered possession to be delivered over certain specific shares of the several judgment-debtors. *Held* that, under the circumstances described above, the High Court would interfere in revision under s. 622 of the Code of Civil Procedure, although it was possible that the matters complained of might be grounds for a separate suit. *Guise* v. *Jaisraj, I. L. R., 15 All., 405; Gopal Das* v. *Alaf Khan, I. L. R., 11 All., 383;* and *Prosunno Kumar Sanyal* v. *Kali Das Sanyal, I. L. R., 19 Calc., 663,* referred to. GHULAM SHABBIR *v.* DWARKA PRASAD [I. L. R., 18 All., 163

294. ——————— *Decision as to admissibility of document—Error in law.*—*Per* FARRAN, *C.J.*—When Courts in the exercise of their judicial functions decide that a document is inadmissible in evidence, having exercised their judgment upon the question of its admissibility or inadmissibility, we have no jurisdiction to interfere in the matter under s. 622. What the Courts do in such a case, assuming the document tendered to be erroneously rejected is to make a mistake upon a question of law, and it does not appear to me to be material whether the mistake in law is made during the hearing of the case or in the final decision. A mere error in law is not, I think, an illegality or a material irregularity within the meaning of s. 622 of the Code. MADHABRAV GANESHPANT DYE *v.* GULABBHAI LAKABHAI [I. L. R., 23 Bom., 177

295. ——————— *Revision, Powers of—Stamp Act (I of 1879), s. 34, sub-s. (3).* —A certain document, although unstamped, was admitted in evidence by the first Court. Upon appeal the Subordinate Judge refused to admit the document in evidence, on the ground that it was unstamped, and on the merits reversed the judgment of the first Court and dismissed the suit. The plaintiff moved the High Court under s. 622, Civil Procedure Code, on the ground that, under s. 34, sub-s. (3), of the Stamp Act, the document, although unstamped, was admissible in the lower Appellate Court, inasmuch as the first Court admitted the same. *Held* (by MACLEAN, *C.J.*) that s. 622, Civil Procedure Code, did not apply. That an error of law does not amount to acting, in the exercise of jurisdiction, illegally or with material irregularity within the meaning of s. 622, Civil Procedure Code. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc.,* 6, relied upon. *Mathura Nath Sarkar* v. *Umes Chandra Sarkar, 1 C. W. N., 626; Mohunt, Bhagwan Ramanuj Das* v. *Khetter Moni Dassi, 1 C. W. N., 617,* referred to. *Held* (by BANERJEE, *J.*) that the error of the lower Appellate Court in rejecting the document, admitted by the first Court, as not stamped, in contravention of s. 34 of Act I of 1879, comes within that part of s. 622, Civil Procedure Code, which speaks of a Court's acting with material irregularity in the exercise of its jurisdiction. That the rejection of the document is more in the nature of a materially irregular act than an erroneous decision on a point of law. The case of *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc.,* 6, must be taken to have settled that it is not every error of law that will come within the scope of s. 622, Civil Procedure Code, but it does not follow that no error of law, unless it is also an error of jurisdiction, can come within the operation of that section. That the error in this case was gross and palpable, and it was likely to have led to injustice. *Amir Hassan Khan* v. *Sheo Baksh Singh, I. L. R., 11 Calc.,* 6, explained. *Mohunt Bhugwan Ramanuj Das* v. *Khetter Moni Dassi, 1 C. W. N., 617; Mathura Nath Sarkar* v. *Umes Chandra Sarkar, 1 C. W. N. 626;* and *Raghu Nath Gujrati* v. *Rai Chatraput Singh, 1 C. W. N., 633,* referred to. ENAT MONDUL *v.* BALORAM DEY. 3 C. W. N., 581

296. ——————— *Civil Procedure Code (Act XIV of 1882), s. 108—Ex-parte decree, setting aside, Effect of, as against contesting defendants who preferred appeal—Jurisdiction of a Court to set aside, under s. 108, Civil Procedure Code, decree of a superior Court.*—Plaintiff brought a suit against defendants 1 and 2 for declaration of title to, and for khas possession of, certain land against the other defendants. The suit was contested by defendants 1 and 2 only, and plaintiff obtained a decree. Defendants 1 and 2 preferred an appeal to the Subordinate Judge's Court and a second appeal to the High Court, with the result that the judgment of the first Court was upheld; the other defendants, who were no parties to the appeal, applied to set aside the *ex-parte* decree; the Munsif ordered that "the *ex-parte* decree be set aside and the original regular suit be restored." By a later order defendants 1 and 2 were allowed to defend the suit *de novo* and to file fresh defences. *Held* that the Munsif had no jurisdiction to set aside the decree as against defendants 1 and 2, which was not an *ex-parte* decree and was not a decree of his Court, but that of a superior Court; and that the

SUPERINTENDENCE OF HIGH COURT—*concluded*

4. CIVIL PROCEDURE CODE, S. 622 —*concluded*

High Court had jurisdiction, under s 622 Civil Procedure Code to set aside the order of the Munsif That . . . . . . the case of . . . t of . . . *Zemi-dulla* v *Johurennessa Bibee* . . . 53 distinguished. MONOMOHINI CHOWDHURANI *v.* NABA NARAYAN ROY CHOWDHRY . 4 C. W. N., 456

SUPERSTITIOUS USES

——— Bequest for—

See WILL—CONSTRUCTION 2 Hyde, 65
[5 B. L. R., 433
2 B. L. R , O C., 148
I. L. R., 15 Mad., 424

——— Statute of—

See ENGLISH LAW—SUPERSTITIOUS USES STATUTE OF . 1 Bom , Ap , 4
[12 Bom , 214

SUPPLEMENTAL SUIT.

See COSTS—SPECIAL CASES—PARTITION.
[I L. R., 21 Calc , 904

SUPREME COURT, BOMBAY.

See JURISDICTION—ADMIRALTY AND VICE ADMIRALTY JURISDICTION
[5 Moore's I. A., 137

See JURISDICTION—MATRIMONIAL JURISDICTION . . 4 W. R., P. C , 91
[6 Moore's I. A , 348

1. ——— Charter of Supreme Court—*Construction of statute—Statute limiting prerogative of the Crown—Power to grant leave to appeal in criminal case* —Under the Bombay Charter of the Supreme Court, 8th December 1823, that Court was invested with full and absolute powers to allow or deny an appeal in criminal cases, and no power was reserved to the Crown by such Charter to grant leave to appeal in such cases, such power being only reserved as to civil cases. The case of *Christian* v. *Cowan, 1 P. W., 329*, observed on. QUEEN *v.* STEPHENSON . . . 3 Moore's I. A., 488

QUEEN *v.* EDULJEE BYRAMJEE
[3 Moore's I. A., 468

The Charter, having been granted by the Crown by force of an Act of Parliament, must be construed with reference to the powers conferred by the Act, even though the prerogative of the Crown were limited by such construction QUEEN *v.* EDULJEE BYRAMJEE
[3 Moore's I. A., 468

2. ——— *Construction of Charter—Law of limitation—English law* —The Charter of 8th December 1823 which created the . . . . . . by s 29 that "in . . . . . . ntance and . . . . . . all matters of contract and . . . and party, ... by the . . . . . . ere the . . . . . . of the Gentoos, or by such laws and usages as the same would have been determined by if the suit had been . . . . . . and the 37th section . . . id . . . ie . . . d, . . . ll . . . ie . . . al . . . the . . . id accommodating the same to their religion . . . rs, and usages, and to the circumstances of the country, so far as the same can consist with the due execution of law and the attainment of substantial justice" . . . . . . those sections that as . . . . ment of the Court on such . . . . the fact to raise an objection to the cause . . . eided by the English law of limitations. RUCKMABOYE *v.* LULLOOBHOY MOTTICHUND
[5 Moore's I. A., 234

3. ——— Jurisdiction—*Admission of attorneys.*—The Supreme Court, Bombay, had no jurisdiction to admit persons as attorneys and solicitors to practise in the Courts there, except such as were qualified in the manner pointed out in the Bombay Charter and Letters Patent of 1823 establishing the Court, *etc*, those who had been admitted in the Courts at Westminster or were practising in the Recorder's Court, Bombay, at the time of the publication of the Charter. MORGAN *v.* LEECH
[2 Moore's I. A., 428

4. ——— *Suit for partition of property out of jurisdiction.*—The late Supreme Court (Bombay) had no power to decree a partition of ancestral property situate beyond the limits of its jurisdiction. RAMCHANDRA DADA NAIK *v.* DADA MAHADEV NAIK . . . 1 Bom., Ap , 76

5 ——— *Suit concerning revenue — Government quit rent — Suit against Collector of Revenue for distraint.*—By the Charter

SUPREME COURT, BOMBAY—*concluded.*

of the Supreme Court, Bombay, of December 1825, that Court was prohibited from entertaining any suit in any matter concerning the revenue under the management of the Governor and Council or any act done in the collection thereof. In an action of trespass brought against the Collector of Revenue at Bombay for distraining for arrears of Government "quit-rent,"—*Held*, reversing the judgment of the Bombay Court, that the "quit-rent" was part of the revenue of the Company at Bombay, and the Court therefore had no jurisdiction. SPOONER *v.* JUDDOW

[4 Moore's I. A., 353

SUPREME COURT, CALCUTTA.

1. ——— *Carrying on business.*—An inhabitant of Benares, trading at Calcutta and having a house of business there, held to be subject to the jurisdiction of the Supreme Court. JANOKEY DOSS *v.* BINDABUN DOSS

[3 Moore's I. A., 175

2. ——— Jurisdiction of Criminal Court—*Party privy to misdemeanour committed within jurisdiction.*— Under the general jurisdiction of the Supreme Court at Calcutta, a person, though resident at Benares, was liable to its jurisdiction, if privy to, and co-operating in, a misdemeanour committed within it. Where, therefore, a party resident at Benares was indicted with others before the Supreme Court for a conspiracy in procuring the prosecutor to be arrested in a fictitious action at law, and the instructions for the arrest were proved to the satisfaction of the jury to have originated with the appellant, it was held by the Judicial Committee that the offence having been completed within the jurisdiction of the Supreme Court at Calcutta, that Court had rightly assumed jurisdiction over the parties privy to it, though from the slight nature of the evidence they directed a new trial. JANNOKEE DOSS *v.* KING . . . 1 Moore's I. A., 67

SUPREME COURT, MADRAS.

See HIGH COURT, JURISDICTION OF—MADRAS—CIVIL I. L. R., 8 Mad., 24

1. ——— Jurisdiction—*Order allowing Registrar to institute suit on behalf of infants—Officer of Court entitled to commission—Personal interest in conduct of suit—Stat. 2 & 3 Will. IV, c. 34.*—An order was made on the equity side of the Supreme Court at Madras by which the Registrar, an officer who under the practice of the Court was entitled to a commission of 5 per cent. on all sums of money paid into Court, was allowed by consent of the Court or a Judge to institute proceedings for the benefit of infants where it appeared their property was unprotected. *Held*, in a case in which he was allowed to file a bill on behalf of certain such infants, that the order being made under the general jurisdiction of the Supreme Court, and not under the Stat. 2 & 3 Vict., c. 34, was void, it being against public policy to allow an officer of the Court to institute suits in the conduct of which he might have a direct personal interest. KERAKOOSE *v.* SERLE

[3 Moore's I. A., 329

SUPREME COURT, MADRAS—*concluded.*

2. ——— *Equitable jurisdiction in suits relating to charitable funds.*—The Supreme Court, Madras (established by the Madras Charter, 1800), had an equitable jurisdiction similar to, and corresponding with, the equitable jurisdiction exercised by the Court of Chancery in England over charities. ATTORNEY GENERAL *v.* BRODIE

[4 Moore's I. A., 190

SURBORAKARI TENURE.

See LAND TENURE IN ORISSA.

[I. L. R., 11 Calc., 699

SURETY.

	Col.
1. LIABILITY OF SURETY . . .	9085
2. ENFORCEMENT OF SECURITY . .	9088
3. DISCHARGE OF SURETY . . .	9096
4. MISCELLANEOUS CASES . . .	9098

See EXECUTION OF DECREE—MODE OF EXECUTION—PRINCIPAL AND SURETY.

[I. L. R., 4 Calc., 331
I. L. R., 19 Bom., 578

See GUARANTEE . I. L. R., 6 Mad., 406
[I. L. R., 10 All., 531
22 W. R., 209

See HINDU LAW—DEBTS.

[I. L. R., 11 Mad., 373
I. L. R., 23 Bom., 454

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . . 1 Bom., 135

See CASES UNDER PRINCIPAL AND SURETY.

See CASES UNDER RECOGNIZANCE TO APPEAR.

See CASES UNDER SECURITY FOR GOOD BEHAVIOUR.

— Agreement to become, on deposit of security.

See CONTRACT ACT, s. 23—ILLEGAL CONTRACTS—GENERALLY.

[I. L. R., 1 All., 751

——— Discharge of—

See BILL OF EXCHANGE.

[I. L. R., 3 Calc., 174

See MINOR—BOMBAY MINORS ACT (XX OF 1864) . I. L. R., 19 Bom., 245

See CASES UNDER PRINCIPAL AND SURETY—DISCHARGE OF SURETY.

——— Liability of—

See BOND . . 9 B. L. R., 364
[14 Moore's I. A., 86

——— of defaulting tenant, Suit against—

See RES JUDICATA—PARTIES—PRO FORMA DEFENDANTS . 3 B. L. R., Ap., 37

SURETY—*continued*

——— Suit by, against principal for money paid on his account

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CONTRIBUTION

[B L R, Sup Vol, 691

1 LIABILITY OF SURETY

1. ——— **Duration and extent of liability.**—*A surety must be taken to have entered into his contract only for the time during which the relation created by the instrument of suretyship exists and with reference only to the person to whom he made himself responsible* MOHIP NARAIN *v* SHAW . 25 W. R, 250

2 ——— *Security bond for restitution of property taken under decree—Liability of surety where decree is reversed on appeal—*

liable for the fulfilment of the decree, not only of the Court of Regular, but also of that of the Court of Special Appeal NARAYAN DEV *v* GAJANAN DIKSHIT . 10 Bom, 1

3 ——— *Liability of guar ... for gomashta—Death of surety* —Where a

during the period of the guara ...

apply to a time after the guarantor's death when all power of advising or controlling the gomashta had ceased LYALL & CO *v* AMORABUTTY DOSSEE

[20 W R, 12

4. ——— *Civil Procedure* ... *final decree*

against him in ap...

doing, they bound themselves "to pay jointly and severally, at the order of the Court, all such sums as the Court should, to the extent of R812 8 adjudge"

... that the obligation

... ellate that ... passed ... in ... APAJI BHIVRAV ... , 654

Held in the same case on appeal under the Letters Patent that the obligation of the sureties was not confined to the first decree of the Appellate Court, ... which it passed upon

SURETY—*continued.*

1. LIABILITY OF SURETY—*continued*

5 ——— **Extent of liability**—*Security ... the discharge of duties by mohur-*

his own free will and pleasure pledged a certain ... for the mohurrir

... of the amount of the security ...

sums shown to have been misappropriated ...

he could not be held liable for losses which accrued to the Municipality from misconduct on the part ...

ALLAHABAD ...

6. ——— *Withdrawal of* ...

security thus allowed to be withdrawn ...

money is permitted to remain in the hands of sureties in order to its being applied to the purpose to secure which they become sureties it is the duty of each as between himself and co-sureties to see that the money is not misapplied. WOON CHIT POE *v* WEE CHANG 15 W. R., 185

7. ——— *Suit against surety of Nazir by party whose property has been misappropriated by Nazir*—The surety of a Nazir who had entered into the usual bond of indemnity with the Collector of the district against all losses caused by the Nazir during the tenure of his office was held not liable, at the suit of a person whose property had been misappropriated by the Nazir to make good any loss sustained by such person BODHA GOPE CHOWDHRY *v* BRAJAGABIND DAS

[9 B L R., Ap, 23; 18 W. R., 250

8 ——— *Civil Procedure Code 1882, s 336—Execution proceedings*—The liability of a surety under s 336 of the Civil

SURETY—*continued.*

1. LIABILITY OF SURETY—*continued.*

Procedure Code ceases when the proceeding taken in execution of a decree wherein the security was furnished comes to an end. LALJI SAHOY *v.* ODOYA SUNDERI MITRA . . I. L. R., 14 Calc., 757

9. ———— *Judgment-debtor applying to be declared an insolvent—Civil Procedure Code, ss. 336, 344.*—*S* on the 16th January 1886 obtained a decree for a certain sum of money against *C*. In execution of that decree *C* was arrested on the 28th January, and upon his being brought before the Court he expressed his intention of applying to be declared an insolvent under the provisions of Ch. XX of the Code of Civil Procedure, and he was thereupon released upon furnishing security, under the provisions of s. 336 of the Code. *K* became surety for *C* and executed a bond undertaking to produce *C* at any time when the Court should direct him so to do, and in default of so producing him to pay the amount of the decree, and standing security for *C*'s applying to be declared insolvent. On the 19th February *C* filed his petition to be declared an insolvent before the District Judge under s. 344 of the Code, and on the 11th May 1886 his petition was dismissed owing to his non-appearance. *S* thereupon applied for execution of the decree against *K*. *Held* that *K* was released from his obligation under the bond executed. KOYLASH CHANDRA SHAHA *v.* CHRISTOPHORIDI

[I. L. R., 15 Calc., 171

10. ———— *Civil Procedure Code, ss. 336, 344—Judgment-debtor applying to be declared an insolvent.*—A person who executes a bond undertaking to produce a judgment-debtor at any time when the Court should direct him to do so, and standing security under s. 336 of the Civil Procedure Code for the judgment-debtor's applying to be declared insolvent, is released from his obligation under the bond when the judgment-debtor files his petition under s. 344 to be declared insolvent. *Koylash Chandra Shaha* v. *Christophoridi, I. L. R., 15 Calc., 171,* approved. RAMZAN *v.* GERARD

[I. L. R., 13 All., 100

11. ———— *Civil Procedure Code (1882), s. 336—Bond for production of insolvent judgment-debtor—Conditions in bond unprovided for by s. 336.*—Where in a bond under s. 336 of the Code of Civil Procedure, besides the usual covenants to produce the judgment-debtor before the Court, and that the judgment-debtor would apply to be declared an insolvent, further stipulations were contained as to what should happen if the judgment-debtor's application to be declared insolvent were refused, it was *held* that the latter stipulations were not such as were contemplated by s. 336, and could not be enforced under that section. JANKI DAS *v.* RAM PARTAB . I. L. R., 16 All., 37

12. ———— *Civil Procedure Code (1882), s. 336—Judgment-debtor's application to be declared an insolvent—Release of the surety.*—A person standing surety for a judgment-debtor under s. 336 of the Civil Procedure Code (Act XIV of 1882) is released from his obligation when the judgment-debtor has applied to be declared an insolvent. *Koylash Chundra Shaha* v. *Christophoridi, I. L. R., 15 Calc., 171,* and *Ramzan* v. *Gerard, I. L. R., 13 All., 100,* followed. DWARKADAS PARSHOTAMDAS *v.* ISABHAI DAUDKHAN

[I. L. R., 19 Bom., 210

13. ———— *Surety for minor—Contract Act (IX of 1872), s. 128.*—A surety to a bond passed by a minor for moneys borrowed for purposes of litigation not found to be necessary is liable to be sued on it, whether the contract of the minor is considered to be void or voidable. KASHIBA *v.* SHRIPAT NARSHIV . I. L. R., 19 Bom., 697

2. ENFORCEMENT OF SECURITY.

14. ———— Mode of enforcement—*Act XXIII of 1861, s. 8—Surety-bond—Execution.*—A surety-bond taken by the Court under s. 8 of Act XXIII of 1861, after judgment had been pronounced, could be enforced under s. 204 of Act VIII of 1859. ABDUL KARIM *v.* ABDUL HUQ KAZEE

[8 B. L. R., 205: 15 W. R., 21

15. ———— *Execution of decree against surety—Surety-bond for payment of costs under s. 342.*—A bond given as security for costs under s. 342 of Act VIII of 1859 could be enforced in a summary way by proceedings in execution. CHUTTERDHAREE LALL *v.* RAMBELASHEE KOER

[I. L. R., 3 Calc., 318: 1 C. L. R., 347

16. ———— *Civil Procedure Code, 1859, s. 204—Execution of decree against surety—Stay of execution on security being given.*—Where a sale in execution of a decree was stayed on the security given by a third party,—*Held* that, on default by the defendant, the decree could not be summarily enforced against such surety under s. 204 of Act VIII of 1859. GAJENDRANARAYAN ROY *v.* HEMANGINI DASI

[4 B. L. R., Ap., 27: 13 W. R., 35

17. ———— *Civil Procedure Code, 1859, s. 204—Sureties under Civil Procedure Code, 1859, ss. 76, 83—Sureties after decree.*—S. 204, Act VIII of 1859, applied to cases such as that of parties who became sureties under s. 76 or s. 83, but not to parties who became securities after a decree was passed. RAM KISSEN DOSS *v.* HURKHOO SINGH . . . 7 W. R., 329

Rejecting a review in HURKHOO SINGH *v.* RAM KISHEN . . . . 6 W. R., Mis., 44

18. ———— *Civil Procedure Code, 1859, s. 204—Compromise embodied in decree—Execution against surety.*—A compromise embodied in a decree was to the effect that defendant should pay to plaintiff the principal sum within a specified period, and that, if he (defendant) were successful in another suit against a different party, he would also pay the interest. He succeeded in his suit in the first Court, but his suit was dismissed on appeal. The judgment-debtor subsequently paid the

SURETY—*continued.*

2 ENFORCEMENT OF SECURITY—*continued.*

principal but was afterwards arrested, and *M H* became surety for his production and for the payment of the interest if the order of the Munsif releasing the judgment debtor were set aside on appeal *Held* (by MARKBY, J.) that the decree on the compromise was not one upon which execution could be carried out at any rate for the sum which was only conditionally due as the inquiry relative to the fulfilment of the condition could only be made in a regular suit; and that execution could not be [illegible]

[illegible]

of a decree or any part thereof LOLAKEE LALL *v.* MAHOMED HOSSEIN KHAN . 14 W. R., 63

19. ———————— *Civil Procedure Code, 1859, s. 204—Surety for performance of decree—Suit on surety bond*—When a person has become liable as security for the performance of a decree s 204 of Act VIII of 1859 gives a remedy to the decree-holder against the surety in addition to any remedy which he may have on the surety-bond It does not prevent the decree holder from bringing a suit on the surety bond to enforce the contract made with him by the surety, and the lien on the property mortgaged to secure the performance of that contract ABDUL KADIR *v.* HURREE MOHUN 6 N. W., 261

20. ———————— *Civil Procedure Code, 1859, s 204—Surety executing bond for payment of decree by instalments—Alteration of terms of decree*—Where, by an arrangement sanctioned by the proper Court, the terms of a decree were varied, and provision was made for its payment by instalments for the payment of a portion of which instalments a surety executed a bond hypothecating his property,—*Held* that the terms of s 204 of the Civil Procedure Code were not applicable to such an arrangement CHUNDER DEEN *v.* HUSSUN ALI [3 N. W., 88

21. ———————— *Civil Procedure Code, 1877, ss 210, 253—Execution of decree against surety—Payment of decree by instalments*—A judgment-debtor whose property was about to be sold appeared before the officer appointed to conduct the sale, and applied for its postponement, producing a surety and a bond, in which such surety promised to pay the amount of the decree within one year, if the judgment-debtor did not do so Such officer thereupon applied to the District Judge to postpone the sale, stating that such surety was willing to pay the amount of the decree by instalments within one year and forwarding such bond. The District Judge ordered the sale to be postponed and the papers to be sent to the Munsif who had made the decree and ordered the sale of the property. The Munsif made no order regarding the security, but merely made an order that the amount of the decree should be paid by instalments within one year The judgment-debtor did not pay the amount of the decree within the time fixed, and the decree-holder therefore applied for execution of the decree against such surety. *Held* that, inasmuch as the decree holder had not been a party to the proceedings of the sale-officer or of the District Judge, and as the parties had not appeared before the Munsif, and as such surety had not agreed to pay the amount of the decree by instalments, the provisions of s 210 of Act X of 1877 were not applicable and such surety had not become a party to the decree as altered by the Munsif; that such surety had not made himself a party to the decree by promising to pay its amount within one year; and that therefore his liability was not one which could be enforced in execution of the decree under s 253 of Act X of 1877 CHANDAN KUAR *v.* TIRKHA RAM . I L R, 3 All, 809

22. ———— *Civil Procedure Code, 1882 s. 253—Surety for execution of appellate decree, Remedy against*—In 1874 the execu- [illegible]

[illegible]

behalf. *Held* that the judgment creditor could not proceed summarily against the surety under the provisions of s 253 of the Code of Civil Procedure, 1882. BALAJI *v* RAMASAMI . I. L. R., 7 Mad., 284

23. ———————— *Civil Procedure Code, 1882, s 253—Execution of decree against surety*—A surety entered into a bond undertaking to produce certain debt bonds in case the defendant in a suit should fail to produce them, or to pay the amount mentioned therein Upon an application being made that execution should issue against the surety,—*Held* that a bond so worded did not make the surety liable for the performance of the decree so as to bring the case within s 253 of the Code of Civil Procedure, and that the liability of the surety could not be enforced in execution NARAYANAMMA *v.* RAMAYYA CHETTI [I. L. R., 23 Mad., 288

24 ———— **Right to enforce security**—*Civil Procedure Code, 1859, s 204—Order cancelling security bond*—Where a person became a surety in the course of the proceedings on an appeal to pay all such sums as might be decreed against the plaintiff on appeal, the decree when passed could be executed against the surety under s 204 of the Civil Procedure Code, and an appeal would lie from an order made in execution of such decree against the surety. Where a person became surety, and gave a security bond undertaking to pay all sums of money that might be decreed against the plaintiff on the defendant's appeal, and the appeal was dismissed for default, and on the application of the plaintiff the Recorder made an order cancelling the bond, and returned it to the surety without notice to the defendant, and afterwards the defendant's appeal was on application restored, and a decree passed against the plaintiff,—*Held* that the Recorder's order was invalid, and execution could issue against the surety notwithstanding that order. AKHUT RAMANA *v* AHMED YOUSAFJI.

[7 B. L. R., 81; 15 W. R., 538

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

25. ———— *Security for restitution of property taken in execution—Reversal of decree—Execution against surety—Civil Procedure Code, 1882, ss. 253, 545, 546.*—S. 253 of the Civil Procedure Code contemplates a suit pending at the time security is given for performance of the decree, and does not apply to a case where the litigation in the Courts of first instance and of first appeal has ended, and no second appeal had been instituted in the High Court when security is given. The holder of a decree affirmed on appeal by the District Court took out execution to recover costs awarded. Costs were deposited by the judgment-debtor and paid to the decree-holder and a surety gave a bond by which he undertook to refund the amount to the judgment-debtor in the event of the latter succeeding in appeal to the High Court and of the decree-holder failing to repay him. The judgment-debtor subsequently filed an appeal to the High Court and was successful, and he then applied in the execution department to recover the amount from the surety. *Held* that the Court executing the High Court's decree had no jurisdiction to execute it against the surety. HARDEO DAS *v.* ZAMAN KHAN [I. L. R., 8 All., 639

26. ———— *Execution of decree against surety pending appeal.*—*H* obtained a decree in the High Court against *S* for certain moveable and immoveable property. *S* appealed to the Privy Council. While that decree was pending, *H* applied for the execution of her decree, and *N* became her surety for R 10,000. The decree, however, was not executed. The Privy Council reversed the decision of the High Court and dismissed the suit of *H* with costs. *S* then sought to execute his decree for costs against *N*, the surety. *Held* that *N* was not liable. IN THE MATTER OF THE PETITION OF NAFAR CHAND PAL CHOWDHRY [6 B. L. R., Ap., 126

S. C. NUFFER CHUNDER PAUL CHOWDHRY *v.* SOORENDRO NATH ROY . . . 14 W. R., 410

27. ———— *Execution of decree against surety—Civil Procedure Code, 1859, s. 204.*—In consideration of the plaintiffs being allowed to proceed with the execution of a decree which they had obtained in the High Court, *A* became surety upon a bond for the payment of what might be due to the defendants by such plaintiffs in the event of their decree being reversed or modified by the Privy Council, to which an appeal was then pending. *Held* that the summary procedure under s. 204 of Act VIII of 1859 might be enforced against *A* as such surety. Compare Act X of 1877, s. 253. CHUNDER KANT MOOKERJEE *v.* RAM COOMAR COONDOO . . . . . 3 C. L. R., 505

28. ———— *Civil Procedure Code, 1877, s. 253—Execution of decree against surety—Execution of decree of Privy Council—Security for costs of respondent—Civil Procedure Code, 1877, s. 610.*—An appeal was preferred to Her Majesty in Council from a final decree passed on appeal by the High Court, and *B* and certain other persons on behalf of the appellant gave security for the costs of the respondent. Her Majesty in Council dismissed the appeal, and ordered the appellant to pay the costs of the respondent. The respondent applied to the Court of first instance for the execution of that order against *B* and the other persons as sureties. *Held* by STUART, C.J., PEARSON, J., and OLDFIELD, J., that, under ss. 610 and 253 of Act X of 1877, such order could be executed against the sureties. *Per* SPANKIE, J., and STRAIGHT, J.—*Contra.* BANS BAHADUR SINGH *v.* MUGHLA BEGAM [I. L. R., 2 All., 604

29. ———— *Appeal to Privy Council—Security for costs of respondent—Execution of decree against surety—Civil Procedure Code (Act XIV of 1882), ss. 253, 602, 603, 610.*—A plaintiff, having preferred an appeal to Her Majesty in Council, was called upon to furnish security. Thereupon *A*, on behalf of the appellant, executed a security bond for the costs of the respondent. The appeal was dismissed with the costs by Her Majesty in Council. On an application (by the respondent in the appeal) for execution to issue against the estate of *A*, the surety (who died in the meantime),—*Held* that the liability of the surety under the security bond could not be enforced in execution of the decree of Her Majesty in Council. *Bans Bahadur Singh v. Mughla Begam, I. L. R., 2 All., 604*, dissented from. RADHA PERSHAD SINGH *v.* PHULJURI KOER . . . . I. L. R., 12 Calc., 402

30. ———— *Execution of decree against surety—Surety for costs of appeal—Separate suit—Summary procedure—Civil Procedure Code, 1882, ss. 253, 549.*—S. 253 of the Civil Procedure Code is not applicable to a surety who has become security in an Appellate Court. A security-bond, therefore, executed by a surety on behalf of appellant for the costs of an appeal under s. 549 of the Code, cannot be summarily enforced against the surety in the execution-proceeding: the remedy is by separate suit. *Bans Bahadur Singh v. Mughla Begam, I. L. R., 2 All., 604*, dissented from. *Radha Pershad Singh v. Phuljuri Koer, I. L. R., 12 Calc., 402*, followed. KALI CHARUN SINGH *v.* BALGOBIND SINGH . I. L. R., 15 Calc., 497

31. ———— *Surety for amount of decree pending appeal—Execution of decree—Separate suit—Civil Procedure Code, 1882, ss. 244, 253, and 545.*—Where a surety has become security for the appellant in an Appellate Court under s. 545 of the Code of Civil Procedure, the security bond cannot be enforced in execution of the decree under s. 253, but a separate suit must be brought against the surety. *Kali Charun Singh v. Balgobind Singh, I. L. R., 15 Calc., 497*, referred to. TOKHAN SINGH *v.* UDWANT SINGH [I. L. R., 22 Calc., 25

32. ———— *Civil Procedure Code, 1882, ss. 253, 545, 582, and 583—Execution of decree — Security for performance of decree of

SURETY—*continued*

2. ENFORCEMENT OF SECURITY—*continued*

Appellate Court—Method of enforcing such security—Where in an appeal security has been given to the Appellate Court for the due performance of such decree as it may pass, the decree-holder may enforce such security in the manner provided for by s. 253 of the Code of Civil Procedure *Bans Bahadur Singh* v *Mughla Begam, I L R, 2 All, 604,* followed *Thirumalai* v *Ramayyar, I L R, 13 Mad, 1,* and *Venkapa Naik* v *Baslingapa, I L R, 12 Bom, 411,* approved *Kali Charan Singh* v *Balgobind Singh, I L R, 15 Calc., 497,* and *Tokhan Singh* v. *Udwant Singh, I L R, 22 Calc, 25,* dissented from JANKI KUAR v SARUP RANI

[I. L. R, 17 All, 99

33 ———— *Execution of decree against surety—Security for due performance of appellate decree, Enforcement of—Civil Procedure Code (1882, as amended by Act VII of 1888), s 546*—A security bond given by a third party for the due performance of the decree of the Appellate Court under s 546 of the Civil Procedure Code cannot be enforced in execution of that decree *Radha Pershad Singh* v *Phuljuri Koer, I L R, 12 Calc, 402, Kali Charun Singh* v *Balgobind Singh, I L R, 15 Calc, 497,* and *Tokhan Singh* [illegible]

[illegible]

[I L R, [illegible]

34 ———— *Execution of decree—Surety*—A suit was instituted by C against H S in the Hooghly Court and was dismissed with costs On appeal by the plaintiff, the defendants obtained an order in the High Court calling on C to give security for costs in the Court below and on [illegible]

[illegible] s. 204, Act VIII of 1859, by attachment and sale of the house, the Court granted the application HIRALAL SEAL v CARAPIET 9 B L R., Ap, 17

35 ———— *Civil Procedure Code, ss 253 and 583—Stay of execution of decree appealed against on giving security—Surety for fulfilment of appellate decree—His liability—Mode of enforcing it—Execution proceedings—Separate suit*—Under Act VIII of 1859 and the supplemental Act XXIII of 1861, the ordinary mode of enforcing payment by a surety was by summary process in execution, not by means of a separate suit. This was so equally whether the security had been taken in the course of the original suit or of the appeal The present Code of Civil Procedure (Act XIV of 1882) makes no alteration in the law on this subject Reading s 253 with s. 583 of Act XIV of 1882 it is clear that the Court has the power to proceed against a person who has become a surety under s. 546, for the fulfilment of the decree in appeal in the same way as against a surety who has become liable under s 253 to satisfy a decree of a Court of first instance The words "in an original suit" in s 253 may be treated as a superfluous expression VENKAPA NAIK v BASLINGAPA

[I L R., 12 Bom, 411

36 ———— *Security for costs—Security* [illegible] *—Civil Procedure* [illegible] *—Act VII of 1* [illegible] *of 1868), s 6*— [illegible] applied for leave to execute his decree (which was one for costs) against a person who had become security for the costs of an appeal which had been [illegible]

[illegible] ring to s 6 of the General Clauses Act rejected the application on the ground that proceedings against the surety had been commenced before Act VII of 1888 had come into force *Held* on appeal that the application should have been allowed ABDUL WAHAB v FAREEDOONISSA

[I. L. R., 16 Calc, 323

37 ———— *Civil Procedure Code, 1882, ss 253, 546, 583—Surety for the due performance of appellate decree—Mode of enforcing liability of such surety Execution of decree*—When security had been given on behalf of the respondent to an appeal under s 546 of the Code of Civil Procedure for the due performance of the decree of the Appellate Court and the appeal had been [illegible]

[illegible]

38 ———— ———— *Civil Procedure Code, 1882, s 336—Surety, Liability of—Execution-proceedings*—The liability of a surety under s. 336 of the Civil Procedure Code ceases when the proceeding taken in execution of a decree wherein the security was furnished comes to an end. D, a judgment debtor was committed to jail on the 8th August 1884 and he applied, under s. 336 of the Civil Procedure Code to be released On the 16th of November 1884 B and C stood security for him under the provisions of s 336 of the Civil Procedure Code that he would appear when called on, and that he would within one month apply under s. 344 to be declared an insolvent, and D was thereupon released Instead of applying under s. 344 to be declared an insolvent, he applied to have the decree, which had been obtained *ex parte,* set aside This application was disallowed and the decree-holder was directed to take further steps

SURETY—*continued.*

2. ENFORCEMENT OF SECURITY—*continued.*

On the 21st of February 1885 the application for execution of the decree was struck off. The decree-holder on the 20th of July made a fresh application to execute the decree against the sureties, unless they should produce the judgment-debtor in Court. *Held* that the power reserved to the Court, under s. 336 of the Civil Procedure Code, to realize the security in execution of the decree could not be exercised when the execution-proceedings wherein the security was furnished was no longer in existence. LALJI SAHOY *v.* ODOYA SUNDERI MITRA

[I. L. R., 14 Calc., 757

39. ———— *Right of sureties to appeal—Extent of their liability—Attachment before judgment—Security under s. 484 of Civil Procedure Code (Act XIV of 1882)—Decree—Stay of execution by Appellate Court—Fresh security under s. 545 of Civil Procedure Code (Act XIV of 1882)—Liability of original sureties.*—A surety against whom a decree is sought to be enforced under s. 253 of the Code of Civil Procedure (Act XIV of 1882) has a right of appealing against an order made in the execution-proceedings. *A* and *B* became sureties under s. 484 of the Code of Civil Procedure (Act XIV of 1882) for the production of property attached before judgment by the Court of first instance. Under their surety-bonds they were bound, in default, "to pay to the said Court such sum as the said Court may adjudge against the said defendant." The Court of first instance passed a decree in the plaintiff's favour for R229-14-0. Against this decree both parties appealed to the District Court. In that Court the defendant obtained an order for stay of execution of the original decree on his furnishing security, under s. 545, "for the due performance of such decree or order as may ultimately be binding on him." He accordingly gave fresh security. The Appellate Court passed a decree in plaintiff's favour for R800 and costs. Thereupon the decree-holder sought to enforce the appellate decree against the sureties *A* and *B* under s. 253 of the Civil Procedure Code. The sureties contended, first, that the original decree having merged in the appellate decree, they were not liable at all under their bond which related only to the decree of the Court of first instance; secondly, that they were responsible only for so much as was by the original decree adjudged against the defendant; and, thirdly, that their original liability had been extinguished by reason of execution having been stayed without their assent by the Appellate Court on defendant's furnishing a fresh security. *Held* that the liability of the sureties could not properly be extended beyond the amount, including costs, awarded to the plaintiff by the Court of first instance. That and no other sum was such "as the said Court may adjudge against the said defendant." The security given to the Court of first instance was for the satisfaction of its decree, not the possible decree of a higher Court. If an appeal was made, it was left to the Appellate Court to regulate the terms on which it would take security for the execution of its own decree. *Held* also that, so soon as the decree of the Court of first instance was made, the liability of the sureties was fully incurred, and they were severally bound to place at the disposal of the said Court, when required, the property specified in their bond, or, in default, to pay such sum as the said Court should adjudge against the defendant. This liability, having been incurred, was not extinguished by the fact that an appeal had been brought against the decree. If the amount adjudged by the decree was reduced in appeal, their liability would be diminished to a like extent; or, if the decree was reversed, their liability would be reduced to nothing, but their liability did not cease, because the decree of the first Court merged in that of the Appellate Court. SULEMAN *v.* SHIVRAM BHIKAJI I. L. R., 12 Bom., 71

40. ———— *Surety after passing of decree—Mode of realization of security—Civil Procedure Code, s. 253—Jurisdiction of Revenue Court.*—Where, after the passing of a decree for arrears of rent, a friend of the judgment-debtor entered into a security-bond whereby he rendered himself personally liable and hypothecated a share in certain zamindari property to secure the performance of the decree, it was held that the obligation created by such security-bond could not be enforced by a Court of revenue by the sale of the hypothecated property. BEHARI LAL *v.* JAGNANDAN SINGH . . . I. L. R., 19 All., 247

41. ———— *Surety under Civil Procedure Code (1882), s. 349—Surety for insolvent judgment-debtor—Default of principal—Liability of surety—Mode of enforcing liability of surety.*—The Civil Procedure Code (Act XIV of 1882) provides no means for enforcing in execution a surety-bond passed under s. 349. The proper course of the plaintiff is to obtain an assignment of the bond with a view to suing on it. MINGALE ANTONE KANE *v.* RAMCHANDRA BAJE . I. L. R., 19 Bom., 694

42. ———— *Liability of surety after decree passed in original suit—Civil Procedure Code (Act XIV of 1882), s. 253 Execution of decree against surety.*—An *ex-parte* decree was set aside on condition that the defendant should find a surety who would be responsible for any amount that might be found due from the defendant by any decree to be subsequently made in the suit. On an application to execute the decree, which was subsequently made against the defendant by the decree-holder both against the defendant and the surety, objection was taken to the execution by the surety, and was allowed by the Court below. *Held* that under s. 253 of the Code of Civil Procedure the decree-holder was entitled to take out execution against the surety. SONATUN SHAHA *v.* DINO NATH SHAHA

[I. L. R., 26 Calc., 222
3 C. W. N., 228

3. DISCHARGE OF SURETY.

43. ———— Appearance of debtor—*Act XXIII of 1861, s. 8 Discharge of defendant on bail.*—Where a Court during the pending of an

SURETY—*continued*

3 DISCHARGE OF SURETY—*continued*

inquiry under Act XXIII of 1861 s 8 allowed the defendant to be at large upon security for his appearance when called upon and when the Court had concluded the inquiry it was found that the defendant had appeared the liability of the surety was held to be at an end BALMER LAWRIE & Co *v* HUREE NARAIN PODDAR . 24 W R., 282

44 ———— Change in circumstances under which security was given—*Guarantee for good conduct of gomashta—Transfer of property guaranteed*—Where two parties executed a surety bond addressed to *J*, *R*, and *M*, when *J* and *M* ceased to have any interest in the property, there was such entire change in the nature of the service that the sureties' liability did not continue, and they were not liable to be sued upon their bond RAJ KRISTO MOOKERJEE *v* ISSUR CHUNDER MOOKERJEE 23 W R., 90

45 ———— *Alteration of position and risk of salt darogah—Liability of surety for performance of duties*—When a salt darogah deposits security for the due performance of his duties to be appropriated by Government in case of loss to the State from his failure to perform them and the Government, without his consent alters his position and risk, such alteration relieves him from his engagement as surety SHIB NARAIN BANERJEE *v* GOVERNMENT W. R., 1864, 138

46 ———— *Civil Procedure Code ss 336, 341—Insolvency—Surety for insolvent judgment debtor filing petition*—One *B M* became surety under s 336 of the Code of Civil Procedure on declared an insolvent ... surety's asking the Court to declare him discharged of his liability the Court refused to do so *Held* that the surety's liability was discharged by the judgment debtor applying to be made an insolvent *Koylash Chunder Shaha v Christophori I L R 15 Calc*, 171, referred to BANNA MAL *v* JAMNA DAS . . I. L. R., 15 All, 183

47. ———— Acceptance of further security—*Security signed by surety—Security bond*—A security, voluntarily signed, existing upon the record and even taken off the file, is a valid and subsisting security The intentions and motives of the obligor in giving the security must be judged by what is mentioned in the instrument The acceptance of the separate security of one surety is not invalidated by the acceptance of separate securities of five other sureties. GOPAL INDER NARAIN ROY *v* JAGAR NATH GURO

[5 W. R., P. C, 129 2 Moore's I. A., 311

48 ———— Notice of intention to cease to be surety—*Security for payment of rent*—A surety for the due payment of rent by a third person must if he wish to discharge himself, give notice to the person to whom the guarantee has been given. GUNESH KOOER *v* OOMDUTOONNISSA BEGUM

[6 N. W., 77

4 MISCELLANEOUS CASES

49 ———— Surety of lessee afterwards becoming his partner—*Suit by surety for illegal ejectment of lessee—Suit for damages*—Where a person became surety for the due performance by the lessee of the obligations contained in a lease for a term of years and afterwards became a partner with the lessee, and the lessor evicted the lessee before the expiration of the lease—*Held* that a suit would lie by the surety for damages arising from the illegal ejectment, although the surety was not a party to the original contract with the lessor BURRODAKANT ROY *v* RAM TUNNOO BOSE . 7 W R., P. C, 15

S C BURDAKANTH ROY *v* ALUK MUNJOOREE DASIAH . 4 Moore's I A, 321

50 ———— Suit by surety after satisfaction of bond—*Cause of action—Limitation*—The plaintiff executed a bond jointly with a servant of the defendants on 10th July 1861 The proceeds were expended for the defendant on the 20th August 1861. The creditor obtained a decree upon the bond for principal and interest which the plaintiff satisfied by two payments made on 4th July 1866 and 30th June 1868 respectively He brought a suit against the defendant for the amount on 22nd June 1869 *Held* that the plaintiff could maintain his suit against the defendant for the amount paid by him and that the suit was not barred by the law of limitation BHAGIRATH ADHIKARI *v* TARINI CHANDRA PAKRASI

[7 B L R., 35 15 W. R., 413

Reversing on appeal S C BHOOPERUTH ADHIKAREE *v* TARINEE CHUNDER PAKRASSEE

[14 W. R., 174

SURRENDER OF TENURE.

See CASES UNDER LANDLORD AND TENANT — ABANDONMENT RELINQUISHMENT, OR SURRENDER OF TENURE

See LANDLORD AND TENANT—LIABILITY FOR RENT I. L. R, 10 Calc., 700

See LANDLORD AND TENANT—PAYMENT OF RENT—NON PAYMENT

[I. L. R., 18 Bom., 250

SURVEY.

1. ———— Survey proceedings, Power of Collector to re-open —Where a survey is once concluded the map completed, and the thakbust proceedings brought to a close a Deputy Collector has no authority to re-open the proceedings and if he does so on the application of one party and issues a notice to the opposite party, the latter is not bound

SURVEY—*concluded.*

to appear. KALEE NARAIN BOSE *v.* ANUND MOYEE GOOPTA . . . . 21 W. R., 79

2. ——— **Excess lands found after survey** — *Presumption.* — Where the admitted mileck lands of a raiyat were found by survey to be somewhat in excess of the land re-leased to him by resumption proceedings based on a former survey, it was held that the excess could not be assumed as a matter of course to be mâl lands. DINOBUNDHOO SUHAYE *v.* COURT OF WARDS . 11 W. R., 347

SURVEY ACT (BOMBAY).

See BOMBAY SURVEY AND SETTLEMENT ACT I OF 1865.

SURVEY AWARD.

See CASES UNDER ACT XIII OF 1848.

See CASES UNDER LIMITATION ACT, 1877, ARTS. 45, 46 (1859, S. 1, CL. 6).

1. ——— **Requisites for survey award** —*Decision on bonâ fide contention.*—To constitute a survey award, there must be a decision on a *bonâ fide* contention between the parties after a proper investigation into the points of issue between them. NUBO KISHEN ROY *v.* GOBIND CHUNDER SEIN [6 W. R., 317

2. ——— **Decision on fact not disputed** —*Beng. Reg. VII of 1822—Summary award.* —The finding of a Survey Deputy Collector that a party has been in possession of certain land for more than a year, where the fact is not disputed, is not a "summary award" under Regulation VII of 1822. RADHAPERSHAD SINGH *v.* RAMJEEWUN SINGH [11 W. R., 389

3. ——— **Striking off complaint in Survey Department.** — On a complaint being made in the Survey Department as to a demarcation of land, the Deputy Collector, instead of investigating the circumstances, ordered a local inquiry by an Ameen, and on the plaintiff omitting to deposit the Ameen's fees, struck the case off his file. *Held* that the decision was not an award on which a cause of action could be based. KRISTO CHUNDER DOSS *v.* SOUDAMONEE DOSSEE . . 12 W. R., 174

4. ——— **Order of settlement officer without inquiry.** *An entry made in the settlement papers was objected to on the merits.* The objection was disallowed summarily without inquiry, on the ground that the papers had been drawn out more than a year before the objection was taken. *Held* that such an order was not "an award," inasmuch as it did not adjudicate on the rights of the parties or on the question of possession, and therefore that it was not an order on which a Court could found its judgment rejecting the suit without disposal of the point at issue upon the evidence. HEERA DASS *v.* HURMOO SINGH [1 N. W., Part II, p. 17 : Ed. 1873, 77

5. ——— **Act XIII of 1848, Operation of**—*Effect of award.*—Act XIII of 1848 operates in certain cases to give to a survey award the full effect of a decree of a Civil Court, by taking away from the Courts the power of entertaining any suit for contesting the justice of such award after a limited time. MOKUND MOORAREE BISWAS *v.* WOOMA CHURN MOOKERJEE . 23 W. R., 173

SURVEY AWARD—*continued.*

6. ——— **Sanction by Collector** — *Acceptance of proceedings as correct.*—To make a survey demarcation effective, it is not absolutely necessary that there should be any more special sanction by the Collector than a general acceptance of the survey proceedings as correct. HUNOOMAN CHOWBAY *v.* BINDHOO TORABA . . . 10 W. R., 336

7. ——— **Right to benefit under award** —*Persons representing party to award.*—The representatives of a party to a survey award are entitled to the benefits thereof. RAJMOHUN MITTER *v.* COMMISSIONER OF THE SOONDERBUNS . 1 W. R., 344

ALI ASHRUF *v.* CHONGA GOBIND ROY [5 W. R., 220

8. ——— **Effect of award** —*Act IV of 1840, Award under—Evidence of title.*—An award under Act IV of 1840 between an intervenor and a party other than the plaintiff was no evidence against the plaintiff. AMEEROONISSA KHATOON *v.* JUGGUR NATH ROY . . . . 11 W. R., 113

9. ——— *Effect of survey award on purchaser—Evidence of title.*—A purchaser is bound by a survey award passed against the persons from whom he derived his title. ALLYAT *v.* JUGGUT CHUNDER ROY . . 5 W. R., 242

10. ——— *Act IV of 1840, Award under.—Semble*—Where a zamindar let his estate in farm for a term of years, and so delegated the whole of his rights, privileges, and immunities to another person, he was held to become himself bound by an adverse decision under Act IV of 1840, to which the former was a party. LEKHRAJ ROY *v.* COURT OF WARDS . . . 14 W. R., 395

11. ——— *Act IV of 1840, Award under, failure to set aside.—Held* that the plaintiff, having failed to set aside an award made under Act IV of 1840 within the period of limitation, could not claim in opposition to the award. GOPAL NATH *v.* ABDOOL GHANEE . . 1 Agra, 120

12. ——— *Notice of survey proceedings – Joint proprietors.*—A co-proprietor of a joint undivided estate was held to be bound by a survey award and compromise to which the other joint proprietors were parties when notice of the survey proceedings was served on the proprietors jointly, and not on him individually. HUR LAL ROY *v.* SOORUJ NARAIN ROY . . . 3 W. R., 7

13. ——— *Proceedings under Act IV of 1840—Evidence of possession.*—Proceedings under Act IV of 1840, to which both litigants have been parties, was held to be properly treated as evidence between them on the question of possession. RADHA CHURN DASS GOSSAMEE *v.* AKRANKHOOTEA . . . 20 W. R., 420

KASHEE KISHORE ROY *v.* BAMA SOONDAREE DEBIA . . . . . 23 W. R., 27

SURVEY AWARD—*continued*

14 ——————— *Effect as against decree for possession* — A survey award cannot override the decree of a competent Court awarding possession HURO NATH ROY *v* ANUND CHUNDER ROY [1 W R., 329

15 ——— — *Evidence of possession—Evidence of title* —Survey proceedings are evidence of actual possession, and must be regarded as correct, so far as the appearance of the country is recorded thereon, but if questioned in time, are not conclusive on the question of title LEELANUND SINGH *v* MOHENDRO NARAIN SING [13 W R., P. C , 7

16 *Proof of possession—Suit to set aside survey award* —In a case for setting aside a survey award which declared the plaintiff and the opposite party entitled to certain

appropriated by him and what by the intervenor separately, for the loss suffered by each party by diluvion , and after that how much, and what, of the remainder is entitled to be held jointly TARINEE KANT LAHOORY *v* HANEE MUNDUL [7 W. R., 203

17 ——— ——— — —— *Award by superintendent of survey—Evidence of title* —An award by the superintendent of survey is not conclusive evidence of a contested right in a regular suit KOYLASH CHUNDER GHOSE *v* RAJ CHUNDER BANERJEE 12 W. R , 180

18 ——— — *Decis on on Act VI of 1840—Evidence of title* —A decision in an Act IV of 1840 case was no evidence of title one way or the other GUDADHUR *v* KOONDOO RAMKOOMAR BOSE 6 W R , 155

19 — ——— —— — *Award under Act IV of 1840—Proof of title* —An award under Act IV of 1840 was not sufficient proof of title when the person in whose favour it was given did not maintain his possession under the award before the survey authorities, and allowed his adversary to take actual possession GOKUL KISHORE SHAHA *v* RAJ KISHEN SURMAH 3 W. R , 129

20 ——————— *Suit to set aside award under Act IV of 1840—Proof of title* —In a suit to set aside an award under Act IV of 1840 — *Held* that the plaintiff ought to furnish some decisive proof of his title to justify the Court in disturbing the award of a competent authority, and that the resumption proceedings instituted by Government, which declared only that the lands were unfit for resumption and therefore left them in the plaintiff's possession were not such convincing proof of title BAMASOONDREE DALBA CHOWDHRANEE *v* BHOGBUTTEE DABEA CHOWDHRANEE GREESH CHUNDER CHOWDHRY *v* BHUGBUTTEE DABEA CHOWDHRANEE [1 Hay, 405

SURVEY AWARD—*concluded*

21. *Award under Beng. Reg VII of 1822, s 33—Power of Court to set aside award* —*Held* that an award of arbitrators under s 33 Regulation VII of 1822, could not be set aside by the Courts of Judicature FURZUND ALI *v* AHMED HOSSEIN 1 Agra, 267

22 ——————— *Award for more than amount of land claimed* — A survey award, if given for more than is claimed is not binding as to the excess It is not conclusive as to title LUTEFT NARAIN SINGH *v* NARAIN SINGH 1 W R , 333

SURVEY OFFICER.

See CASES UNDER KHOTI SETTLEMENT ACT

See UNDER SETTLEMENT OFFICER

See SPECIAL OR SECOND APPEAL—ORDERS SUBJECT OR NOT TO APPEAL. [I L R., 21 Calc , 935

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[I. L R., 19 Bom , 338
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See GRANT—POWER OF ALIENATION BY GRANTEE I. L. R , 11 Calc , 1

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See HINDU LAW —INHERITANCE—SPECIAL HEIRS —FEMALES —DAUGHTERS
[I. L R., 6 Bom , 85
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See HINDU LAW INHERITANCE SPECIAL HEIRS—MALES —AFFILIATED SON [I. L. R. 17 Mad , 48

See HINDU LAW—INHERITANCE—SPECIAL LAWS—NIHANGS
[I L R., 16 All , 191
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See HINDU LAW—JOINT FAMILY—POWERS OF ALIENATION BY MEMBERS — OTHER MEMBERS . 3 B. L. R., F. B., 31
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See HINDU LAW — PARTITION — REQUISITES FOR PARTITION.
[I. L. R., 19 Mad., 345

See HINDU LAW—PARTITION—SHARES ON PARTITION—GENERAL MODE OF DIVISION . . I. L. R., 5 Calc., 142

See HINDU LAW — WILL—CONSTRUCTION —SURVIVORSHIP.
[I. L. R., 15 Bom., 443
I. L. R., 23 Calc., 563
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[I. L. R., 16 Bom., 630

See REPRESENTATIVE OF DECEASED PERSON.
[I. L. R., 19 Mad., 345

See WILL—CONSTRUCTION.
[I. L. R., 5 Calc., 59

——— Joint tenancy—*Joint speculation on improving land—Real and personal property.*—A joint speculation in improving land on a hazard of profit and loss is treated in equity as in the nature of merchandise and *jus accrescendi* not allowed. The survivorship in the case of joint tenancy is not an incident to it in the case of leasehold property and personal estate. WEBBE *v.* LESTER
[2 Bom., 55: 2nd Ed., 52

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TACKING.

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See GRANT—CONSTRUCTION OF GRANT.
[18 W. R., 469
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See LEASE—CONSTRUCTION.
[8 W. R., 391
22 W. R., 326

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[I. L. R., 21 Calc., 997
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See BOMBAY ACT, VI OF 1862, s. 12.
[I. L. R., 11 Bom., 78, 551

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS. I. L. R., 11 Bom., 551
[L. R., 14 I. A., 89

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[I. L. R., 16 Bom., 408
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——— Conduct of, as indicating his successor.

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[I. L. R., 3 Calc., 626
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[I. L. R., 3 Calc., 522
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[14 B. L. R., 209
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[1 B. L. R., S. N., 27
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[I. L. R., 18 Mad., 88

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[I. L. R., 12 Mad., 241
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[14 B. L. R., 209
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[I. L. R., 17 All., 483

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[I. L. R., 15 Calc., 452

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——— Drawback on—

See BOMBAY MUNICIPAL ACT, 1888, s. 158
[I. L. R., 17 Bom., 394

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See BOMBAY DISTRICT MUNICIPAL ACT, 1873, s 21 I. L. R., 21 Bom., 630

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[I. L. R., 21 All., 348

——— Liability to—

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[I. L. R., 20 Bom., 732
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[9 Bom., 217

See BOMBAY MUNICIPAL ACT, 1888, s 143
[I. L. R., 16 Bom., 217

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s 87.
[I. L. R., 22 Calc., 581
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[I. L. R., 18 Mad., 310
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I. L. R., 18 Mad., 183
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See MADRAS MUNICIPAL ACT, 1878, s 103
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[I. L. R., 13 Mad., 518
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[I. L. R., 22 Calc., 680

——— Suit to recover, illegally levied.

See BENGAL MUNICIPAL ACT, 1884 s 85.
[2 C. W. N., 689

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[I. L. R., 17 Bom., 510

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[I. L. R., 21 Mad., 367

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[I. L. R., 23 Mad., 523

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[I. L. R., 19 Mad., 10

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See STATUTES, CONSTRUCTION OF. [I. L. R., 1 Mad., 158 8 Bom., A. C., 213

1. ——— Certificate tax—*Neglect to take out certificate—Fine.*—The fine imposed under s. 17, Act IX of 1868, for neglect to take out a certificate must not be less than twice the amount for which such certificate should be taken out. QUEEN *v.* RAM GOBIND CHUCKERBUTTY [2 B. L. R., Ap., 40 11 W. R., Cr., 13

2. ——— Complaint for neglecting to take out certificate—*Collector also Magistrate.*—Where it is sought to recover the penalty described in s. 17, Act IX of 1868, from any person who omits to take out a certificate, the Collector who issued the notice should prefer a complaint before a Magistrate, and the Collector cannot prefer the complaint before himself in his capacity of Magistrate. ANONYMOUS [4 Mad., Ap., 62

3. ——— Magistrate, Powers of.—A Magistrate was held to have acted rightly in dismissing complaint under s. 17 of Act IX of 1868, because there was no evidence that the names of the accused were included in the list mentioned in s. 17. In a prosecution under this Act, a Magistrate must proceed in the manner laid down in Ch. XV of the Code of Criminal Procedure, 1861, and must require proof of all the facts which go to constitute the offence. QUEEN *v.* KHETTRO MOHUN GHOSE [11 W. R., Cr., 56

4. ——— Muhtarafa—*Trade tax, Zamindar's right to collect—Mad. Reg. XXV of 1802, s. 4—Mad. Reg. XXV of 1832.*—The right of collecting the muhtarafa of trade tax from artizans in his zamindari has not been delegated by Government to the zamindar of Karvaitnagar, and cannot be legally exercised by his assignees. *Quære*—Whether it was competent for Government to delegate the collection of the muhtarafa to zamindars for their own use. VEDANTA *v.* KANNIYAPPA [I. L. R., 9 Mad., 14

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——— Discretion of—

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——— Mistake of—

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See CONTRACT—WAGERING CONTRACTS. [4 Moore's I. A., 339 5 Moore's I. A., 109 6 Moore's I. A., 251

——— Principal and agent—*Gambling Act (XXI of 1848).*—Where the plaintiff had expended money at the request of the defendant in the purchase or settlement of tazi mandi chittis,—*Held* he was entitled to recover notwithstanding Act XXI of 1848. KANAYALAL *v.* CHAGMAL BATTIA [8 B. L. R., 412

BHAIRABNATH KHETTRI *v.* JUMANRAM DHANDARIA . . . . . 8 B. L. R., 415 note

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See LIMITATION ACT, 1877, ART. 7 (1859, s. 1, CL. 2). [1 B. L. R., S. N., 20 : 10 W. R., 260

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See REGISTRATION ACT, 1877, s 17. [I. L. R., 14 Bom, 319

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See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.
[I. L. R., 11 Bom., 69, 573

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[I. L. R., 15 Mad., 448
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—— *Suit against, for share of rent.*

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See BENGAL RENT ACT, 1869, s 46.
[1 B. L R, S. N., 7: 10 W. R., 101
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See TRANSFER OF PROPERTY ACT s 83 [I. L. R., 17 Mad., 287

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2 C. W. N., 147

1. ——— Validity of tender—*Contract Act, s 38—Tender of interest on mortgage-debt* — Under a mortgage-deed taken to secure the repayment within three years of a sum of R16,00 advanced by the plaintiff, with interest at 15 per cent from the 2nd July 1874, the date of the mortgage, it was stipulated that interest should be paid every six months, but that, if a year's interest should be unpaid, then the whole amount due for principal and interest should become payable at once, and also that the mortgagor might, after payment of interest, pay towards satisfaction of the principal any sum not less than R1,000 The first year's interest was allowed to get into arrear, but in September 1875 the defendant went to the plaintiff with R19,000, a [illegible] interest from the date of the mortgage to the date of the suit and subsequent interest. *Held* that the tender made by the defendant although not valid according to English law, was valid under s. 38 of the Contract Act *Per* WILSON, *J*—S 38 of the Contract Act substantially requires that there should be a genuine and unconditional offer, in case of payment, to pay unconditionally at a proper place made by a person in a position to pay KANYE LALL KHAN *v* KHETTERMONEY DOSSEE 5 C. L. R., 105

2. ——— *Offer by letter to pay debt* —A mere offer by a debtor by letter to pay an amount cannot be treated as a tender either in law or in equity In order to stop interest, a strict tender should be proved. KAMAYA NAIK *v* DEVAPA RUDRA NAIK . . I. L. R., 22 Bom, 440

3 ——— *Unconditional tender—Costs* —In a suit to recover R1,323 15-6, the balance of the price of goods sold, on which an account had been come to between the parties, it appeared that the defendant had tendered before suit a sum of R1 013 5, stating in the letter of tender

TENDER—*concluded.*

that the sum so tendered was the only sum due. At the trial the plaintiff obtained a decree for the full amount claimed by him. *Held*, both in the Court below and on appeal, that the tender was bad, and therefore the plaintiffs were entitled to their costs. *Held per* KENNEDY, *J.*, that the tender was bad, being a tender of part of an entire debt. *Held per* GARTH, *C.J.* (MARKBY, *J.*, concurring), that the tender was also bad, as the plaintiffs could not have accepted the sum tendered without giving up the remainder of their claim. CHUNDER CAUNT MOOKERJEE *v.* JODOONATH KHAN

[I. L. R., 3 Calc., 468 : 1 C. L. R., 470

4. ——— *Tender of part of debt, Rule as to—Plea of tender—Payment into Court.*—The rule laid down in *Dixon* v. *Clark*, *5 C. B., 365*, that the tender of only a part of a debt must be treated as if it had never been made, applies only where the party making the tender admits more to be due than is tendered. A plea of tender before action must be accompanied by a payment into Court after action, otherwise the tender is ineffectual. ABDUL RAHMAN *v.* NOOR MAHOMED

[I. L. R., 16 Bom., 141

5. ——— *Agent—Cheque in payment of debt for rent—Suit for rent—Costs.*—The landlord of a house through his agent sent in rent-bills to his lessee. The lessee gave the agent a cheque payable to her attorney for the amount demanded. The attorney realized the amount of the cheque and gave the money to the agent, who tendered it to the landlord's attorney, who refused to accept, and the money was returned to the lessee's attorney. *Held*, in a suit for the rent, that, under the circumstances, the tender amounted to payment. *Held* further that although, as a general rule, the amount of a tender not accepted ought to be paid into Court in order to entitle the defendant to costs, yet that, as the tender in this case amounted to payment, the defendant was entitled to have the suit dismissed with costs. BOLYE CHUND SING *v.* MOULARD

[I. L. R., 4 Calc., 572

TENURE.

——— Condition in lease for—

See BENGAL RENT ACT, 1869, s. 52 (ACT X OF 1859, s. 78).

[B. L. R., Sup. Vol., 972
10 W. R., 156
11 W. R., 201
6 N. W., 326
I. L. R., 9 Calc., 88, 808
4 C. L. R., 469
12 B. L. R., 439

——— created under Court of Wards.

See COURT OF WARDS.

[15 B. L. R., 343

——— Forfeiture of—

See CASES UNDER LANDLORD AND TENANT —ABANDONMENT, RELINQUISHMENT, OR SURRENDER OF TENURE.

TENURE—*continued.*

See CASES UNDER LANDLORD AND TENANT —FORFEITURE.

——— Relief against—

See CASES UNDER LANDLORD AND TENANT —FORFEITURE.

——— Transfer of—

See BENGAL REGULATION VIII OF 1819.

[3 B. L. R., P. C., 48
I. L. R., 17 Calc., 162

See BENGAL TENANCY ACT, s. 12.

[I. L. R., 16 Calc., 642
I. L. R., 19 Calc., 17, 774

See LANDLORD AND TENANT—EJECTMENT —NOTICE TO QUIT.

[I. L. R., 14 Mad., 98

See LANDLORD AND TENANT—FORFEITURE —BREACH OF CONDITIONS.

[I. L. R., 17 Calc., 826

See LANDLORD AND TENANT—FORFEITURE —TRANSFER OF TENANCY.

[I. L. R., 20 Calc., 590

See CASES UNDER LANDLORD AND TENANT —TRANSFER BY LANDLORD.

See CASES UNDER LANDLORD AND TENANT —TRANSFER BY TENANT.

See LEASE—CONSTRUCTION.

[I. L. R., 17 Calc., 826

See ONUS OF PROOF—LANDLORD AND TENANT . I. L. R., 13 Mad., 60

See CASES UNDER RIGHT OF OCCUPANCY—TRANSFER OF RIGHT.

See STAMP ACT, 1862, s. 14.

[3 B. L. R., Ap., 30

1. ——— Grant for purpose of living on the land.—*Per* PEACOCK, *C.J.*—If one man grants a tenure to another for the purpose of living upon the land, that tenure, in the absence of evidence to the contrary, is assignable. BENI MADHUB BANERJEE *v.* JAI KRISHNA MOOKERJEE

[7 B. L. R., 152: 12 W. R., 495

Upholding, on appeal, KEMP, *J.*, in BANEE MADHUB BANERJEE *v.* JOY KISHEN MOOKERJEE

[11 W. R., 354

2. ——— *Homestead land—Transferability under the law before the Transfer of Property Act (IV of 1882)—Custom.*—Where a non-agricultural holding was transferred before the passing of the Transfer of Property Act,—*Held* that it could not be inferred that the holding was transferable from the mere fact that it was used for residential purposes, having regard to the law as it then stood. S. 108, cl. (*j*), of the Transfer of Property Act (IV of 1882) does not apply to transfers which took place before the Act. *Beni Madhub Banerjee* v. *Jai Krishna Mookerjee, 7 B. L. R., 152*, followed.

TENURE—*concluded.*

HARI NATH KARMAKAR *v* RAJ CHANDRA KARMAKAR . . . . . 2 C. W. N., 122

NABU MONDUL *v* CHOLIM MULLICK [I. L. R., 25 Calc., 896

3. ———— Mokurari tenure —It is necessary that a tenure should be mokurari in order to be transferable HUROMOHUN MOOKERJEE *v* LALUNMONEE DASSEE . . . . . 1 W. R., 5

4 ———— Surburakari tenure in Cuttack—*Consent of zamindar* —The alienation of surburakari tenure in Cuttack is not practicable without the consent of the zamindar DOORJODHUN DOSS *v.* CHOOYA DAYE . . 1 W. R, 322

5 ———— Raiyatwari tenure—*Consent of zamindar or talukhdar.—Quære*—Whether a transfer of a raiyatwari tenure can be effected without the consent of the zamindar or talukhdar, as the case might be, the immediate successor in estate. SHIBESSUREE DEBIA *v* MOTHOORANATH ACHARJEE [13 W. R., P. C, 18; 13 Moore's I A, 270

TERM OF YEARS

See ENGLISH LAW—PERSONALTY, LAW RELATING TO . I. L. R, 24 Calc, 216

TERRITORIAL JURISDICTION.

———— Effect of Cession on—

See CESSION OF BRITISH TERRITORY IN INDIA I. L. R., 1 Bom., 367 [L. R., 3 I. A., 102 10 Bom., 37

TERRITORIAL LAW OF BRITISH INDIA.

———— Nature of territorial law—

[illegible]

TERRITORY, TRANSFER OF—

———— District of Kanara—*16 & 17 Vict., c. 95, 21 & 22 Vict, c 106—Indian Councils Act, 24 & 25 Vict, c 67*—The power given by 16 & 17 Vict, c 95, to alter the distribution of territories among the presidencies, was vested by 21 & 22 Vict., c. 106, in the Secretary of State for India, by whose order of 28th of February 1862 North Canara was annexed the new arrangement of territory to take effect from such date as the Governor-General of India in Council should by proclamation appoint for the purposes of the Councils Act, 1861, which Act has reference [illegible]

TERRITORY, TRANSFER OF—*concluded.*

diction and authority of the Courts of Justice, the annexation of those purposes being made by the Secretary of State, and not being qualified or controlled by the proviso in s 47 of 24 & 25 Vict, c 67, which cannot be construed as a substantive enactment, or as qualifying or restraining the power vested in the Secretary of State. REG. *v* VYANKATSVAMI . 2 Bom., 112: 2nd Ed., 106

TESTATOR.

See HINDU LAW—WILL.

See MAHOMEDAN LAW—WILL

See CASES UNDER WILL.

———— Acknowledgment of signature by—

See WILL—ATTESTATION [I. L. R., 1 Bom, 547

———— Creditor of—

See PROBATE —OPPOSITION TO, AND REVOCATION OF, GRANT [I. L. R., 2 Calc, 208
I. L. R, 6 Calc, 429, 460
I. L. R., 10 Calc, 19, 413
L. R., 10 I. A, 80
I L R., 19 Calc, 48
I. L. R., 17 Mad., 373

———— Debts of Hindu—

See VENDOR AND PURCHASER—NOTICE [I. L. R., 4 Calc, 807

———— Power of—

See CASES UNDER HINDU LAW—WILL—POWER OF DISPOSITION

See MAHOMEDAN LAW—WILL

———— Signature of—

See CASES UNDER WILL—EXECUTION

THAKBUST AWARD

See ACT XIII OF 1848 [2 B L. R., P. C, 111: 12 W. R., P. C., 6

THEFT.

See CATTLE TRESPASS ACT, s 22 [I. L. R., 22 Calc, 159

See CHARGE—ALTERATION OR AMENDMENT OF CHARGE [I. L. R., 17 Bom., 369
I. L. R., 27 Calc., 660, 990

See PARTNERSHIP PROPERTY. [13 B. L. R., 307, 303 note, 310 note

See POST OFFICE ACT. s 48 [I. L. R., 14 Mad., 229

See CASES UNDER STOLEN PROPERTY.

THEFT—*continued.*

—— committed outside jurisdiction.

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—RECEIVING STOLEN PROPERTY.

See CASES UNDER JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—THEFT.

—— Damages for—

See HINDU LAW—JOINT FAMILY—SALE OF JOINT FAMILY PROPERTY IN EXECUTION OF DECREE, ETC.

[I. L. R., 24 Calc., 672

—— Suspicion of—

See FOREST ACT, ss. 52, 73.

[I. L. R., 15 Bom., 229

1. —— Penal Code, s. 378—*Definition of theft.*—As to what constitutes theft as defined in the Penal Code. QUEEN *v.* MADAREE [3 W. R., Cr., 2

2. —— *Moving property and severing it.*—The moving by the same act which effects the severance may constitute a theft. ANONYMOUS . . . . 5 Mad., Ap., 36

3. —— *Removal of property against wish of ostensible purchaser thereof —Apparent title or colour of right to property.*—To constitute theft, it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. *Cape* v. *Scott, L. R., 2 Q. B., 269,* followed. QUEEN-EMPRESS *v.* GANGARAM SANTRAM . . I. L. R., 9 Bom., 135

4. —— *Giving up right of possession in property by owner.*—A conviction for theft under the Penal Code is illegal if the owner has given up all property in and all possession of the subject of the alleged theft. ANONYMOUS [4 Mad., Ap., 30

5. —— *Making away with property lawfully possessed.*—The making away with property of which a person has been put in lawful possession by superior authority is not theft, but criminal breach of trust QUEEN *v.* BHARUT CHUNDER . . . 1 W. R., Cr., 2

6. —— *Unexplained possession of rice—Meaning of corpus delicti.*—Where a prisoner was found in possession of rice not thrashed in the usual way, and having no paddy land of his own he failed to account satisfactorily for his possession of the rice,—*Held* he could not be convicted of theft without more evidence. The meaning of the term "*corpus delicti*" explained. ANONYMOUS . . . 7 Mad., Ap., 19

7. —— *Dishonest taking, Omission of allegation of.*—The prisoner was convicted of theft on his own confession. The charge to which the prisoner pleaded did not allege the taking out of the possession of some person dishonestly, and there was no evidence of such taking. *Held* that the conviction was bad. ANONYMOUS 5 Mad., Ap., 37

8. —— *Theft of joint property by co-parcener.*—Theft of joint property may be committed by a co-parcener if he takes it from joint possession and converts such possession into separate possession. QUEEN-EMPRESS *v.* PONNURANGAM . . . I. L. R., 10 Mad., 186

9. —— *Abetment of theft—Receiving stolen property—Joint undivided Hindu family.*—A Hindu, intending to separate himself from his family, emigrated to Demerara as a coolie. After an absence of thirty years, he returned to his family, bringing with him money and other moveable property which he had acquired in Demerara by manual labour as a coolie. On his return to his family, he lived in commensality with it, but he did not treat such property as joint family property, but as his own property. *Held* that such property was his sole property, and his brother was not a joint owner of it, and could properly be convicted of theft in respect of it. It is irregular to convict and punish a person for abetment of theft, and at the same time to convict and punish him for receiving the stolen property. EMPRESS *v.* SITA RAM RAI. . . . I. L. R., 3 All., 181

10. —— *Dispute as to possession of land—Bonâ fide belief as to title—Cutting and carrying away crops sown by another—Facts constituting theft—Dishonest intention—Code of Criminal Procedure (Act V of 1898), ss. 429 and 439.*—An accused person alleged and claimed that certain paddy was grown upon his jote, and that he cut and removed it as a matter of right and in an assertion of a *bonâ fide* claim to the land. It was admitted by the complainant, who also claimed the paddy and the land, that there had been a boundary dispute between his landlord and the landlord of the accused. The accused was convicted in a summary trial of the theft of the paddy. In an application for revision and to set aside the conviction,—*Held per* PRINSEP, *J.*, declining to interfere, that, if the complainant's bargadars had grown the crops as found and nevertheless the accused cut and carried them off, there could be no *bonâ fide* belief that he was entitled to do so, to justify his action in regard to the complainant. With the fact found that possession was with the complainant by the growing by him of the crops cut by the accused, the accused was without justification in thus taking the law into his hands, even if he was entitled to hold the lands, because he was not in actual possession of them *Per* STEVENS, *J.*—The findings of the lower Court taken as a whole amounted to a finding that the accused acted *malâ fides,* and the mere fact that he brought some witnesses to speak to his long possession of the land, and the cultivation of the crops by him, could not be taken as showing that a *bonâ fide* dispute as to title existed between the complainant and himself. To constitute theft, it is sufficient if property is removed against his wish from the custody of a person who has an apparent title or even a colour of right to such property. In the present case the

THEFT—*continued*

[illegible] tle as tenant of the [illegible]

raised the crops which the accused removed The application should be dismissed *Queen Empress* v *Gangaram Santram I L R, 9 Bom, 135*, referred to *Per* STANLEY, *J, contra*—That the evidence [illegible] conclu- [illegible] spute [illegible] was [illegible] arge [illegible] addy was sown by the complainant would not give him the property in the crop, if it were sown *on the land of* the accused If the land was the land of the accused, it was an act of trespass on the part of the complain- [illegible] offence of theft No such intention has been found on the part of the accused The conviction and sentence should be set aside PANDITA *alias* RAHMATULLA PRAMANIK v I AHIMULLA AKUNDO

[I. L R., 27 Calc, 501
4 C W N, 480

11.— — — — *Cutting and remov* [illegible] as they had never claimed the crop as belonging to them, they did not act in good faith believing the crop to be their own property, and were therefore guilty of the offences under ss 143 and 379 *Abdool Biswas* v *Khator Mondol 3 C H N, 332* distinguished JAGAT CHANDRA LOY v RAKHAL CHANDRA LOY 4 C. W. N., 190

12. *Mahomedan married woman—Husband and wife—Taking property of husband*—A Mahomedan married woman may be convicted of theft or abetment of theft in respect of the property of her husband REG v KHATABAI

[6 Bom, Cr, 9

13 ——— *Hindu woman removing stridhan from possession of her husband*—A Hindu woman who removes from the possession of her husband, and without his consent, her palla or stridhan cannot be convicted of theft, nor can any person who joins her in removing it be convicted of that offence REG v NATHA KALYAN

[6 Bom., Cr, 11

14 — — — — *Removal by a wife of her husband's property left in her custody*—There is no presumption of law that a wife and husband constitute one person in India for the purposes of criminal law If the wife, removing her husband's property from his house, does so with dishonest intention, she is guilty of theft QUEEN-EMPRESS v BUTCHI I. L. R., 17 Mad, 401

15 ——— — *Removal of family jewels by wife and persons coming to commit adultery with her*—Two persons were committed for trial, the first prisoner for adultery enticing away a married woman, and theft, and the second prisoner for abetment of the enticing away and theft. The first prisoner was acquitted of the charges of adultery and enticing away The case for the prosecution was that the prosecutor's wife left her husband's house in company with the first prisoner and that previous to her departure she, by means of false keys supplied to her by the second prisoner opened the room where the family jewels and money were kept and removed them The jewels were deposited with the second prisoner for safe custody Part of the money was handed to the first prisoner *Held* that notwithstanding the acquittal the prisoners were not entitled to be discharged without trial on the charge of theft ANONYMOUS 5 Mad., Ap, 23

16 — and s. 114—*Forcibly carrying off crop—Want of consent of owner*—Where a Court finds that parties came with a number of armed men and carried off a crop, the finding amounts to that of a forcible carrying off without the consent of the owner Even if they took no part in the actual taking they must with reference to s 114 Penal Code, be considered guilty of the substantive offence under s. 378 QUEEN v SHIB CHUNDER MUNDLE 6 W R., Cr, 69

17 — *Removal of crop under attachment—Dishonest intention—Madras Rent Recovery Act, s 6 Notice of distraint*—Certain crops which had been distrained for arrears of revenue were harvested and removed by the owners and occupiers of the land, who were thereupon charged with theft The accused were not the defaulters the demand having been made upon certain other persons in whose names the pottahs stood as the registered proprietors The accused were acquitted *Held* that the acquittal was wrong in the absence of a finding whether or not the accused were aware of the distraint and dishonestly removed the crops with such knowledge on the ground that under s 6 of the Madras Rent Recovery Act they were entitled to notice of the distraint which had not been served on them QUEEN EMPRESS v RAMASAMI

[I. L. R., 16 Mad., 364

18 ——— *Person acting under ill founded claim of right*—A person acting under a claim of right (however ill founded such claim may be) is not guilty of theft by asserting it QUEEN v RAM CHURN SINGH 7 W R., Cr, 57

19 ——— *Removing a thing with the object of causing trouble to the owner—Wrongful loss.*—The accused who was charged by his master with having committed theft of a box, stated that he had removed the box and left it concealed in the cowshed to give a lesson to his master,

THEFT—*continued.*

The Sessions Judge in his charge to the jury said: "If the jury find that the accused removed the box to put the owner to trouble, that is causing wrongful loss to the owner, and the act is theft;" and the jury returned a verdict of guilty, finding "that the taking was with the intention of putting the owner to trouble." *Held* the above charge and verdict were based on an erroneous view of the law. It cannot be said that removing a thing to put the owner to trouble is necessarily and in every case causing "wrongful loss." NABI BAKSH *v.* QUEEN-EMPRESS

[I. L. R., 25 Calc., 416
2 C. W. N., 347

20. ——— *Dishonest intention—Wrongful gain—Wrongful loss.*—A charge of theft will lie under s. 378 of the Penal Code (Act XLV of 1860) even where there is no intention to assume entire dominion over the property taken, or to retain it permanently. When a person takes another man's property, believing under a mistake of fact and in ignorance of law that he has a right to take it, he is not guilty of theft, because there is no dishonest intention, even though he may cause wrongful loss within the meaning of the Penal Code. The accused was the brother of a farmer or contractor of a public ferry on the Tadri river. He seized a boat belonging to the complainant while conveying passengers across the creek which flows into the river at a point within three miles from the public ferry. His intention was apparently to compel persons who had to cross the creek to use the ferry in the absence of the complainant's boat, and thereby increase his brother's income derived from fees to be paid by passengers crossing the creek. The accused had no reason to believe that he was justified in seizing the boat. *Held* that the accused was guilty of theft, though it was not his intention to convert the boat to his own use, or deprive the complainant permanently of its possession. QUEEN-EMPRESS *v.* NAGAPPA

[I. L. R., 15 Bom., 344

21. ——— *Absence of dishonest intent—Cutting paddy under claim of right.*—The accused cut and removed paddy from certain land alleging that the land and paddy belonged to his uncle. He cited witnesses in support of his story, and also produced a deed of compromise in support of title. The Magistrate disbelieved the defence witnesses, and found that the land and paddy belonged to the complainant, and that the deed related to other land, but there was nothing in his judgment to show that the petitioner did not *bonâ fide* believe that the paddy belonged to his uncle. *Held* that the findings did not support the conviction for theft. To constitute the offence, it was necessary that the taking away of the paddy should have been done dishonestly, *i.e.*, with the knowledge that it belonged to the complainant and not to his uncle. ABDOOL BISWAS *v.* KHATER MONDAL . . 3 C. W. N., 332

22. ——— and s. 143—*Unlawful assembly and theft—Property in crop grown on another's land on contract to pay latter a certain sum for the crop when grown—Removal of such crop by owner of land.*—An indigo planter agreed with some cultivators that the former would grow rice on their land at his own expense and take the whole crop paying them R16 for each bigha. The owners of the land cut and carried away the crop so grown. *Held* that on the agreement the crop remained the property of the owners of the land which the factory merely agreed to purchase, and that a removal of the crop did not constitute theft, but merely a breach of contract remediable in damages. As the acts did not amount to theft, which was said to be the common object of the accused, conviction for being members of an unlawful assembly could not stand. PARMESHWAR SINGH *v.* EMPRESS

[4 C. W. N., 345

23. ——— *Removal of debtor's property by the creditor—Penal Code as drafted in 1837, s. 363.*—With a view to coerce the complainant to pay a sum of R14, which he owed to the accused, three head of cattle worth R60 were removed from the complainant's homestead under the order of the accused. *Held* the offence of theft was not committed by the accused. The illustrations to s. 378 of the Penal Code indicate that it was the intention of the Legislature that, in order to have committed theft within the meaning of the section, the taker must have taken the thing with intention of keeping it himself, or disposing of it for his own benefit or in some way which would compel the owner to pay him money which he did not owe him in order to regain his property. The words "intending to take dishonestly any moveable property" in the above section, read with s. 23 and s. 24 of the Penal Code, mean "with the intention of gaining by unlawful means property to which he is not legally entitled." "To gain property by unlawful means" means "to gain the thing moved for the use of the gainer," and not "the gaining possession of it for a time for a temporary purpose." S. 363 of the Penal Code as drafted in 1837 discussed. PROSONNO KUMAR PATRA *v.* UDOY SANT . . I. L. R., 22 Calc., 669

24. ——— *Removal of debtor's property by creditor to enforce payment of debt—Wrongful gain—Wrongful loss.*—A creditor, by taking any moveable property of his debtor from the debtor's possession or without his consent, with the intention of coercing him to pay his debt, commits the offence of theft as defined in s. 378 of the Penal Code. Ss. 23 and 24 of the Penal Code discussed and explained. *Prosonno Kumar Patra* v. *Udoy Sant, I. L. R., 22 Calc., 669,* overruled. QUEEN-EMPRESS *v.* SRI CHURN CHUNGO

[I. L. R., 22 Calc., 1017

25. ——— *Removal by creditor of his debtor's property with a view to obtaining payment of his debt.*—*Held* that the removal by a creditor against the will of his debtor of property belonging to such debtor, with the view of compelling such debtor to discharge his debt, amounts to theft within the meaning of s. 379 of the Penal Code. *Queen-Empress* v. *Surmeshar Bai, Weekly Notes, All. (1888), p. 97,* referred to. *Prosonno Kumar Patra* v. *Udoy Sant, I. L. R., 22 Calc., 669,* dissented from. QUEEN-EMPRESS *v.* AGHA MUHAMMAD YUSUF . . . I. L. R., 18 All., 88

THEFT—*continued*

26. ——————— *Assertion of right by accused—Defence to charge of theft*—A bare assertion by an accused charged with committing theft of a proprietary right in the alleged stolen property *is no reason for a Magistrate to refuse to entertain a charge of theft.* QUEEN *v* KALICHARAN MISSER . . . 7 B L R., Ap., 55

S. C. RUNNOO SINGH *v* KALI CHURN MISSER [16 W. R., Cr, 18

See KHETTER NATH DUTT *v* INDRO JALIA [16 W. R., Cr, 78

HURIS CHUNDRA DAS *v.* BOLAI AUDHICAREE [18 W. R, Cr., 75

27. ——————— *Plunder of crops—Assertion of right to crops.*—The mere assertion of a fair claim of property or right, or the mere existence of a doubt as to right, is not sufficient to justify an acquittal in a case of plunder of crops The claim to the property must be proved by evidence to be fair and good NASSIB CHOWDRY *v* NANNOO CHOWDHRY . . . . 16 W. R, Cr., 47

28. ——————— and s. 442—*Boat—Moveable property*—A boat may be the sub- [illegible] theft Although, under s 442 of the Penal [illegible]

29. ——————— *Intention to* [illegible] *vert to his own use, Want of—Temporary use*—When an accused charged with murder was alleged to have taken a boat from a place where it had been secured by its owner, and after proceeding some distance in it had abandoned it and when he was charged with the theft of the boat,—*Held* that the charge was unsustainable, inasmuch as it was evidently not his intention to convert it to his own use, and make it permanently his own property, but merely to make use of it for the purpose of aiding him in escaping ADU SHIKDAR *v.* QUEEN EMPRESS [I. L. R., 11 Calc, 635

30 ——————— *Property removed* [illegible] —*A* [illegible] ting [illegible] the [illegible] the [illegible] *A* in carrying out his [illegible] for theft,—*Held* that, as the property removed was so taken with the knowledge of the owner, the offence of theft had not been committed EMPRESS *v* TROYLUKHONATH CHOWDHRY [I. L. R., 4 Calc., 366; 3 C. L R, 525

31. ——————— *Possession of wood by forest inspector—Removal of wood without* [illegible] *of fees.*—Possession of wood by a forest [illegible]

THEFT—*continued*

32. ——————— *Moveable property.*—*A* dug up and immediately carried away without any authority or right several cart-loads of earth, part of unassessed lands of a village *Held* that *A* was not guilty of theft. QUEEN EMPRESS *v* KOTAYYA [I. L. R., 10 Mad., 255

33. ——————— *Earth—Moveable property.*—Earth, that is, soil, and all the component parts of the soil, inclusive of stones and minerals, when severed from the earth or land to which it was attached, is moveable property capable of being the subject of theft Whoever dishonestly severs such earth from the earth commits theft Where a person dishonestly carried away 100 cart loads of earth from the complainant's land,—*Held* that he was guilty of theft *Queen Empress* v. *Kotayya, I L. R., 10 Mad, 255*, dissented from. QUEEN EMPRESS *v* SHIVRAM [I. L R, 15 Bom., 702

34 ——————— and s. 95—*Valueless produce—Property almost valueless*—Conviction and sentence by a Magistrate reversed, as the act of which the accused was convicted—taking pods (almost valueless) from a tree standing upon Government waste ground—came within the meaning of s 95 of the Penal Code, and did not therefore amount to theft REG *v* KASYA BIN RAVJI [5 Bom., Cr, 35

35 ——————— *Retaining possession of nets of poachers*—The prisoner, acting *bonâ fide* in the interests of his employers and finding a party of fishermen poaching on his master's fisheries, took charge of the nets, and retained possession of them, pending the orders of his employers *Held* that the prisoner was not guilty of theft. QUEEN *v* NOBIN CHUNDER HOLDAR . 6 W. R., Cr, 79

36 ——————— *Taking fish in navigable river*—The taking fish in that portion of a navigable river over which a right of julkur exists in another person *does not fall within s 378 of the Penal Code* HURI MOTI MODDOCK *v* DEVONATH MALO . 19 W R., Cr., 47

BHUSUN PARUI *v* DEVONATH BANERJEE [20 W. R., Cr., 15

37 ——————— *Taking fish from creek*—The wrongful taking of fish from a creek is not theft QUEEN *v* REVU POTHADU [I. L R., 5 Mad., 390

38. ——————— and s 447—*Fishery—Fishing in tank connected with a running stream—Criminal trespass*—Accused were charged with having taken fish from a tank belonging to the complainant, and convicted of theft and criminal trespass under ss 379 and 447 of the Penal Code It was found that the tank in question was not enclosed on all sides, and was dependent on the overflow of a [illegible] flowing channel which was connected with [illegible] the fish [illegible] that [illegible] a time when the floods were [illegible] ected with the streams so that the fish could leave it at pleasure *Held* that the fish were *feræ naturæ* and

THEFT—*continued.*

not in "the possession of" the complainant, and consequently no offence had been committed. *Held* further that, had the fish been taken at a time when they were restrained of their natural liberty, and were liable to be taken at the pleasure of the owner of the tank, the conviction would have been upheld. *In the matter of the petition of Madhab Hari, I. L. R., 15 Calc., 390,* distinguished. MAYA RAM SURMA v. NICHALA KATANI

[I. L. R., 15 Calc., 402

39. ——— and ss. 143, 404, 426, and 447—*Infringement of exclusive right of fishery in public river—Criminal misappropriation—Mischief—Criminal trespass—Unlawful assembly.*—Fish in a public river cannot be said to be property in the possession of the person who may have the fishery right, and the infringement of that right is not theft under s. 378 of the Indian Penal Code. The accused were charged with unlawfully taking fish along with some eleven others in a public river, the right of fishing in which had been let out by the Government to the complainant, and the lower Court, amongst other offences, convicted them of theft, criminal misappropriation, mischief, criminal trespass, and unlawful assembly. *Held* that the conviction was wrong, and that no offence had been committed. BHAGIRAM DOME v. ABAR DOME

[I. L. R., 15 Calc., 388

IN THE MATTER OF THE PETITION OF MADHAB HARI . . . I. L. R., 15 Calc., 390 note

Contra, MODHOO MUNDLE v. UMESH PARNI

[I. L. R., 15 Calc., 392 note

40. ——— s. 379—*Possession—Fish in an enclosed tank.*—Where the accused were found fishing without permission in an enclosed tank belonging to the Municipality of the town of Sirsi, it was held that they could be convicted of theft, as the tank from which the fish were taken was apparently an enclosed tank, and the fish were therefore restrained of their natural liberty, and liable to be taken at any time according to the pleasure of the owner, and were therefore subjects of theft. *Bhusun Parui* v. *Denonath Banerjee, 20 W. R., Cr., 15,* and *Queen* v. *Revu Pothadu, I. L. R., 5 Mad., 390,* distinguised. QUEEN-EMPRESS v. ADAM VALAD SHAIK FARID . I. L. R., 10 Bom., 193

41. ——— and ss. 206, 403, 424—*Harvesting crops under attachment.*—A judgment-debtor, whose standing crops were attached, harvested them while the attachment was in force, and was convicted of theft. *Held* that the accused was not guilty of theft, but of the offence of dishonestly removing the property under Penal Code, s. 424. *Per* BENSON, *J.*—The offence was also criminal misappropriation within the meaning of Indian Penal Code, s. 403. QUEEN-EMPRESS v. OBAYYA

[I. L. R., 22 Mad., 151

42. ——— and ss. 403, 425—*Criminal misappropriation—Mischief—Taking bull set at large at Sradha festival in accordance with Hindu religious usage—Res nullius—Property in Brahmini bull.*—A bull dedicated and set at large at the Sradha of a Hindu in accordance with religious usage is not "moveable property" within the meaning of ss. 378 and 403, or "property" within the meaning of s. 425 of the Penal Code, and could not therefore be the subject of theft, criminal misappropriation, or mischief. The fact that such a bull receives some attention from the cowherd of the persons who set it at liberty and is daily fed by him by direction of his employers, and is not used for breeding purposes without their permission being asked, is not inconsistent with a total surrender by those who set it at liberty of all their rights as proprietors. *Queen-Empress* v. *Bandhu, I. L. R., 8 All., 51,* followed. *Queen-Empress* v. *Nalla, I. L. R., 11 Mad., 145,* referred to and commented on. ROMESH CHUNDER SANNYAL v. HIRU MONDAL . . I. L. R., 17 Calc., 852

43. ——— *Illegal seizure and impounding of cattle.*—The illegal seizure and impounding of cattle is not theft within the meaning of the Penal Code, even if effected with the malicious intent of subjecting the owners to additional expense, inconvenience, and annoyance. ARADHUN MUNDUL v. MYAN KHAN TAKADGEER . 24 W. R., Cr., 7

44. ——— *Removal of salt naturally formed—Bombay Salt Acts (XXVII of 1837 and XXXI of 1850).*—Dishonest removal of salt naturally formed in a creek which was under the supervision of an officer belonging to the Customs Department constitutes theft, the salt having been legally appropriated by such officer. *Per* BAYLEY, and WEST, *JJ.*—But removal for one's own use from a creek of such salt not legally appropriated constitutes *no* offence under the Penal Code or the Salt Acts, though the salt becomes liable to detention. REG. v. MANSANG BHAVSANG . 10 Bom., 74

45. ——— *Taking salt from swamp surrounded by police—Possession.*—A swamp, the property of Government, having been surrounded with police guards by Government to prevent salt being removed,—*Held* that the taking against the will of Government, and with the intention of obtaining an unlawful gain, of salt which had been spontaneously produced on the swamp was theft. QUEEN v. TAMMA GHANTAYA

[I. L. R., 4 Mad., 228

46. ——— and s. 204—*Secreting document produced before arbitrator—Intention—Remoteness of object.*—Where the plaintiff in a suit referred to arbitration by consent, with a view to prevent a witness from referring to an endorsement on a bond (which tended to show that defendant had paid more than it was alleged had been paid by him), snatched up the bond which was lying beside the arbitrator, ran away, and refused to produce it,—*Held* that the offence committed was not theft, but secreting a document under s. 204 of the Penal Code. SUBRAMANIA GHANAPATI v. QUEEN

[I. L. R., 3 Mad., 261

47. ——— s. 380—*Theft in a building—Requisites for offence.*—All that is necessary in

THEFT—*concluded*

order to constitute the offence of theft in a building is that the property should be under the protection of the building: it is not necessary to show unlawful entrance into the building QUEEN v ISHREE PERSHAD 24 W R, Cr, 49

48 ——— and s 409—*Constables taking property from house under their charge*—Theft by constables of property from the house they were employed to guard is punishable under s 380 and not s 409, Penal Code QUEEN v BOIDNATH SINGH 3 W. R., Cr, 29

49 ——— s 381—*Theft by servant*—*Hired boatman*—A hired boatman does not come within the definition of a clerk or servant under s 381 of the Penal Code Theft by such a person on board a boat comes under s 380 QUEEN v RAWOOL MANJEE 8 W R, Cr, 32

50 ——— ss 381, 409—*Stealing money in accused's charge—Criminal breach of trust*—The prisoners were charged with having stolen a sum of money shut up in a box and placed in the police treasury buildings over which they as burkundauzes, were placed on guard *Held* that the charge should have been made under s 381 of the Penal Code (theft by servant in possession of property), and not under s 409 (criminal breach of trust by public servant) QUEEN v JUGGURNATH SINGH [2 W R., Cr, 55

51 ——— s 401—*Belonging to a gang of persons associated for the purpose of habitually committing theft—Evidence of bad Character—Evidence Act (I of 1872) s 14 and s 54 as amended by Act III of 1891*—The character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft, punishable under s 401 of the Indian Penal Code, evidence of bad character or reputation of the accused is inadmissible for the purpose of proving the commission of that offence Where it was proved that certain persons were found together at some distance from their houses that they were all intimately connected with one another and were in the habit of visiting melas together, that one of them was arrested in the act of picking a pocket and that when they were arrested many of them gave false names and false addresses —*Held* they could not be convicted under s 401 of the Penal Code there being no proof that they belonged to a gang of persons associated for the purpose of habitually committing theft. MANKURA PASI v QUEEN EMPRESS [I. L. R, 27 Calc., 139

DWARKA BUNIA v EMPRESS 4 C. W. N, 97

THEKADAR,

1 Meaning of term —The term "thekadar" is properly applicable to hereditary cultivators only when they have also a theka or lease of a share in or the whole of, the profits of an estate BAIJ NATH v MUNSOOKH . 3 N. W., 411

THEKADAR—*concluded*

2 ——— *Mode of creation of thekadar's interest—Effect of accepting theka*—A thekadar is ordinarily a person who holds a theka or lease of the whole of a zamindar's interest in a village There is nothing in the law which renders a writing necessary to the creation of such an interest It is not to be inferred from the mere circumstance that persons accepted a theka that they forewent their existing right LEELA DHUR v BHUGWUNT 3 N W., 39

THUMB IMPRESSIONS

See EVIDENCE—CRIMINAL CASES—THUMB IMPRESSIONS 1 C W N, 33

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——— Refusal to produce—

See RAILWAYS ACT 1871 s 2 [I. L. R, 1 Bom., 25

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See CASES UNDER POSSESSION—EVIDENCE OF TITLE

See CASES UNDER POSSESSION—SUITS FOR POSSESSION—PROOF OF PARTICULAR TITLE

See CASES UNDER RESISTANCE OR OBSTRUCTION TO EXECUTION OF DECREE.

TITLE—*continued.*

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF.

See CASES UNDER VENDOR AND PURCHASER TITLE.—

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See CASES UNDER LIMITATION ACT, 1877, s. 19 (1871, ART. 148)—ACKNOWLEDGMENT OF OTHER RIGHTS.

——— Approval of, by Solicitor.

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[I. L. R., 17 Calc., 919

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See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS.

——— Declaration of suit for—

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See CASES UNDER ONUS OF PROOF—DECLARATION OF TITLE.

——— Denial of—

See CASES UNDER ESTOPPEL—DENIAL OF TITLE.

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I. L. R., 17 All., 45
I. L. R., 20 Bom., 759
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See CASES UNDER LANDLORD AND TENANT FORFEITURE—DENIAL—TITLE.

——— Evidence of—

See CASES UNDER POSSESSION—EVIDENCE OF TITLE.

——— Extinction of—

See CASES UNDER LIMITATION ACT, 1877, s. 28.

See RELINQUISHMENT OF TENURE.
[I. L. R., 1 Bom., 91, 208

——— Notice of—

See CASES UNDER VENDOR AND PURCHASER —NOTICE.

——— Proof of—

See ONUS OF PROOF—POSSESSION AND PROOF OF TITLE.

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See APPEAL—NORTH-WEST PROVINCES ACTS . . . I. L. R., 1 All., 366
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See BENGAL RENT ACT, 1869, s. 27.
[I. L. R., 8 Calc., 365
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9 C. L. R., 253
I. L. R., 12 Calc., 606
I. L. R., 14 Calc., 624

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[I. L. R., 17 Calc., 829
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[I. L. R., 6 Calc., 303
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[I. L. R., 16 Bom., 128

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[I. L. R., 3 Calc., 434

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[I. L. R., 13 All., 309

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[I. L. R., 1 Bom., 624

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[I. L. R., 15 Mad., 223
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[W. R., 1864, Act X, 116
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2 Agra, Rev., 9
3 N. W., 141
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[I. L. R., 14 Calc., 169

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[I. L. R., 14 Bom., 627

TITLE—*continued*

See CASES UNDER RES JUDICATA—COMPETENT COURT—REVENUE COURTS

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See CASES UNDER SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—IMMOVEABLE PROPERTY

See CASES UNDER SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TITLE, QUESTION OF

———— Slander of—

See DECLARATORY DECREE, SUIT FOR—DECLARATION OF TITLE

[I. L. R., 1 Mad., 65

———— Warranty of—

See SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY

[4 Bom., A. C., 111
6 Bom., A. C., 258
12 W. R., 41
I. L. R., 2 All., 103, 828

See CASES UNDER VENDOR AND PURCHASER

1. EVIDENCE AND PROOF OF TITLE

(a) GENERALLY

1. ———— Evidence of title—*Oral evi-*

to landed property,' the High Court on appeal reversed his decision, and held that oral evidence, if believed, may be as good for proving a man's title as documentary evidence. DURBAN FAKEER *v.* NOBIN CHANDRA MAZUMDAR

[1 B. L. R., S. N., 16: 10 W. R., 217

2. ———— *Documentary evidence in India.*—The presumption in favour of the genuineness of documents offered in evidence in India is very weak, but it must not be held that the presumption is in favour of forgery, and when a long series of documents is produced showing a reasonable origin of title nearly a century ago, a regular deduction of that title and a possession consistent with it, confirmed by the fact of such possession existing at the time of the commencement of the respondents' title by purchase in 1833, the evidence of extrinsic improbability should be very strong indeed to counterbalance the weight of such testimony. WISE *v.* BHOOBUN MOYEE DEBIA

[3 W. R., P. C., 5: 10 Moore's I. A., 165

3. ———— *Pottah granted by Collector.*—A pottah of land in Calcutta granted by

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE—*continued*

4. ———— *Forged documents.*

VALOJI KRISTNAN GOPALAR *v.* CHINNA NAYANA CHETTI . . . 15 Moore's I. A., 151

5. ———— *Suit for possession.*—In a suit to recover possession of land which both the plaintiff and defendant claimed to have reclaimed from jungle and to have possessed many years and for which each claimed to have obtained a pottah from Government, the mere fact that the land was included in plaintiff's pottah was held to be insufficient, without going into the facts to ascertain possession, to entitle him to a decree. GOLAM REZA CHOWDHRY *v.* CHANDOO MEAH LUSHKUR

[15 W. R., 45

6. ———— *Possession—Presumption.*—The ordinary presumption that possession goes with the title would be of no avail in the presence of clear evidence to the contrary, but where there is strong evidence of possession on one side opposed by evidence apparently strong also on the

possession. RUNJEET RAM PANDAY *v.* GOBERDHUN RAM PANDAY . 20 W. R., P. C., 25

7. ———— *Possession—Limitation Act (XV of 1877), arts. 143, 144—Conflicting evidence of possession—Presumption of title.*—Where two adverse parties are each trying to make out a possession of twelve years, and the evidence is conflicting and not conclusive on either side,—*Held* that the presumption that possession goes with the title must prevail. DHARM SINGH *v.* HUR PERSHAD SINGH I. L. R., 12 Calc., 38

8. ———— It is only when the evidence of possession is strong on both sides and apparently equally balanced that the presumption that possession goes with title should prevail. The principle does not apply when the evidence of possession is equally unworthy of reliance on both sides. *Dharm Singh v. Hurpershad Singh, I. L. R., 12 Calc., 38,* explained. THAKUR SINGH *v.* BHOOBRAJ SINGH . . I. L. R., 27 Calc., 25

9. ———— *Possession, Presumption of—Waste lands.*—In disputes as to the right to the possession of jungle lands, it is only in cases where neither party has exercised any

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

acts of ownership over the lands in question that the Court may resort to evidence of title, and presume that the party proved to have the title has also possession. RAM BANDHU *v.* KUSU BHATTU [5 C. L. R., 481

10. ———— *Suit for possession—Possession of title-deeds and receipts for rent.*—In a case involving the alternative question of fact whether certain land belonged to *R* or *C*, neither the one nor the other of the opposite party venturing to state who his opponent was, and the testimony of the witnesses on this point being doubtful,—*Held* that *R*, who was in possession of the title-deeds and of the receipts of rent, ought to succeed, unless there was something on the record to countervail such strong evidence. KODA BUKSH KHAN *v.* CHOA [19 W. R., 162

11. ———— *Suit for declaration of title—Onus probandi—Production of title-deeds.*—The plaintiff sued for declaration of her title to property of which the defendant was in possession, but of which she produced the title-deeds in favour of herself. *Held* the onus was on the defendant to disprove the plaintiff's title, and the defendant was not allowed to raise certain fresh issues; but the plaintiff was, under the circumstances of the case, entitled to rely on the title given her by the production of the title-deeds in her favour. SWARNAMAYI RAUR *v.* SRINIBASH KOYAL . 6 B. L. R., 144

12. ———— *Possession—Uninterrupted and undisputed possession.*—Uninterrupted and undisputed possession for a long time constitutes sufficient *primâ facie* evidence of title; but if this possession is admitted to be under an adoption, it will avail nothing if the adoption fails. HAIMUNCHULL SINGH *v.* GUNSHEAM SINGH [5 W. R., P. C., 69

13. ———— *Suit for possession.*—Where, in a suit to recover possession of land, the plaintiff succeeded in proving that he had been in possession up to a recent date, and that he had been forcibly dispossessed by the defendant, the lower Appellate Court threw upon the defendant the burden of proving his title, and, on his failing to do so, decreed the case. *Held* that this was a fair inference of title and of a right to be replaced in possession without going further into the title, that is, to the mode of its acquisition. TRILOCHUN GHOSE *v.* KAILAS NATH SIDHANTO BHOWMIK BHUTTACHARJI . 3 B. L. R., A. C., 298: 12 W. R., 175

14. ———— *Proof of title—Suit for possession.*—In a suit to recover possession on the allegation that plaintiff had been illegally ousted, though holding under a lease from defendant, the latter urged that, though plaintiff had been allowed to hold the tenure as a tehsildar or collector of rents, he had never been the ijaradar or farmer in possession. The Judge found that the estate was really let out in ijara to the plaintiffs by the defendant, who had recovered rents and granted him receipts on account of the ijara mehal. *Held* that this was a complete finding in favour of the plaintiff's title, and that it was not necessary for him to sue for the pottah which had been wrongfully denied him by defendant. JOHEEROODDEEN MAHOMED *v.* DABEE PERSHAD SINGH . . . 13 W. R., 21

15. ———— *Proof of title—Evidence of possession.*—In a suit to establish title, evidence of plaintiff's possession prior to the summary award under s. 15, Act XIV of 1859, under which he was dispossessed, may be good evidence of his title, and must be considered. BULLUBEE KANT BHUTTACHARJEE *v.* DOORJO DHUN SHIKDAR [7 W. R., 89

16. ———— *Possession—Evidence Act, s. 110—Specific Relief Act, 1877, s. 9.*—In a suit for possession, where the plaintiff proved that he had been in possession of the lands in dispute, and that he had been ousted by the defendants who were unable to give any proof of their right so to oust him, or of a superior title,—*Held* (PRINSEP, J., *dissentiente*) that the prior possession of the plaintiff was *primâ facie* evidence of title, and that he was entitled to a decree. *Per* PRINSEP, J.—Proof of prior possession and of illegal dispossession are in themselves no evidence of title, except in a possessory suit under the Specific Relief Act (I of 1877). S. 110 of the Evidence Act applies only to actual and present possession, and does not declare generally that possession shall always be *primâ facie* evidence of title. KAWA MANJI *v.* KHOWAZ NUSSIO [5 C. L. R., 278

17. ———— *Possession—Lands attached by Government as being disputed lands.*—Disputes respecting the boundaries of the zamindaris of Yettiapooram and Ramnad in the district of Madura having led to acts of violence by the raiyats, the Government, in the year 1836, to preserve the public peace, attached the disputed lands and took possession for the benefit of the party to whom the lands should be judicially awarded. At and before the time of the Government taking such possession, the zamindar of Yettiapooram was in possession of certain lands adjacent to, and taken as a part of, the lands in dispute. The lands remained under attachment by Government for a period of nearly twenty years, no steps having been taken regarding them till the year 1855, when the zamindar of Yettiapooram brought a suit against the Collector of Madura and the zamindar of Ramnad to recover possession of the land so formerly occupied by him, and for the mesne profits thereof while in the possession of the Government. Although no clear title in this suit was proved by either zamindar, it was held by the Courts in India, and affirmed on appeal by the Judicial Committee, that the fact of possession of the lands by the zamindar of Yettiapooram before and at the time of the attachment by Government was, under the circumstances, evidence of title, and the Government was ordered to restore the lands to him. ZAMINDAR OF RAMNAD *v.* ZAMINDAR OF YETTIAPOORAM . . 10 Moore's I. A., 47

TITLE—*continued*

1 EVIDENCE AND PROOF OF TITLE —*continued*

18 ——— *Proof of possession—Suit for possession* —In a suit to recover possession of two plots as parcels of the plaintiff's ancestral jammai lands the Court of first instance found that one plot was parcel but was not satisfied that the other was so also The lower Appellate Court agreed with the first finding but further found that there was sufficient evidence of possession to show that both plots were parcels of the jammai *Held*, reversing the decision of FIELD, *J*, that on second appeal the High Court was not entitled to question [illegible]

Broach, 7 Bom [illegible] KANTO BEEPARI *v.* JODHISTEER NATH [10 C L. R., 99

[illegible] public open, and no onus as [illegible] one side, and the omission to register, unexplained by proof of the ill-health of the claimant or absence in [illegible]

20 ——— *Proof of title—Registration in Collector's books* —Registration in the Collector's books is not of itself a proof of title GOBIND NATH SEIN *v* GOBIND CHUNDER SEIN [10 W R., 393

AMEEROONISSA BIBEE *v* WOOMAROODDEEN MAHOMED CHOWDHRY . 14 W R, 49

21 ——— *Entry in Collector's books—Proof of title* —The Collector's book is kept for purposes of revenue, not for purposes of title, and the fact of a person's name being entered in the [illegible] not neces[illegible] defeat [illegible] n., 187

COLLECTOR OF POONA *v* BHAVANRAV BALKRISHNA [10 Bom, 192

SANGAPA MALAPA *v* BHIMANGOWDA MARIAPA [10 Bom, 191

22. ——— *Entry of name in Collector's book* —The fact of a person's name being entered in the Collector's book as occupant of land does not necessarily of itself establish that person's title tor defeat the title of any other person The Collector's book is kept for purposes of revenue, not for purposes of title. *Fatma v. Darya Saheb, 10 Bom. 187* followed BHAGOJI *v* BAPUJI [I. L. R., 13 Bom., 75

TITLE—*continued*

1 EVIDENCE AND PROOF OF TITLE —*continued*

23. ——— *Co-proprietors—Registration of shares in land* —Registration of land under Bengal Act VII of 1876 is not only no conclusive proof, but no evidence at all, upon the question of title of a proprietor so registered. Such registration does not relieve a plaintiff from the onus of proving his title to land claimed by him RAM BHUSAN MAHTO *v.* JEBLI MAHTO [I L R., 8 Calc., 853

See also SARASWATI DASI *v* DHANPUT SINGH [I L R., 9 Calc, 431: 12 C L R, 12

24. ——— *Resumption chittas* —Government resumption chittas in the [illegible] conclu[illegible] *Ram* [illegible]

TARINI MOYI DABIA I L R., 14 Calc., 120

25 ——— *Dispute as to ownership of property—Trespasser—Onus of proof* —A person sued as a trespasser cannot without proof of his own right, oust an apparent owner by pointing out some defect in the title of the latter TULJARAM *v* BAMANJI KHARSEDJI I L R., 13 Bom., 828

26. ——— *Possession—Alleged title by adverse possession for more than the period of limitation* —Land bordered by the estates of each of the parties contesting its ownership was registered in the Collectorate as a separate mouzah, as it also was represented to be in revenue survey map of 1856. In a subsequent survey map of 1865 it appeared as being within the limits of the defendants' adjoining talukh. Neither from these maps nor any other documents was there evidence of title in either party so that possession was all that could be resorted to as the ultimate test of right The plaintiff relied on limitation She asserted more than twelve years' adverse possession by having settled tenants on the disputed ground To entitle her, it was necessary for her the burden of proof being upon her to prove that she had held a possession adequate in continuity in publicity and in extent of area Upon all these points her case was deficient, and therefore her claim failed It was also in evidence, which was the more substantial that the defendant had occupied during that period a part of the land by tenants, and this as proof of possession on his part, applied not only to the plots actually tenanted under him but was contradictory to the whole theory of the plaintiffs' claim. RADHAMONI DEBI *v* COLLECTOR OF KHULNA [I L R., 27 Calc, 943
L R., 27 I. A., 136
4 C. W. N., 597

27. ——— *Ownership, Evidence of—Evidence of titles contested between rival purchasers — Benami transaction — Declaratory decree Suit for* Under the Land Registration Act (Bengal Act VII of 1876) registration of ownership was refused on the application of two rival purchasers of the same property, and a reference concerning

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

them was made to the High Court under s. 55. The one purchaser then sued the other, claiming a decree declaratory of this title, under conveyances made to him in 1890 by a Mahomedan widow, since deceased, and by assignees and lessees from her of parts of her interest in the property. He alleged that a hiba-bil-ewaz, executed by her in 1858 to her son-in-law for no substantial consideration, was nothing more than a benami transfer, after which she had remained the owner with her former title. On that hiba, however, the defence was founded, the defendant averring that it was a real conveyance by the widow, and that through the son-in-law, from whose sons the defendant had purchased the property, the latter had obtained a good title. No actual possession was established by either of the parties. The property had been let in parcels to different tenants. Among other things disputed, it was the subject of conflicting evidence whether leases had been made in the past by the then real owner, or upon assumption of title by the adverse party. The Courts below differed in their conclusion as to which of the parties was entitled to a decree. The Judicial Committee maintained the decision of the Original Court in favour of the plaintiff. NIRMAL CHUNDER BANERJEE *v.* MAHOMED SIDDIK . . . I. L. R., 26 Calc., 11
[L. R., 25 I. A., 225

28. ——— *Survey map—Suit for possession—Ejectment—Evidence of possession and title.*—In a suit for possession of certain land as appertaining to a certain estate and for ejectment of the defendant, brought by a purchaser at a revenue-sale, the only evidence adduced by the plaintiff was two survey maps of the years 1846-47 and 1865-66. The lower Court gave the plaintiff a decree for only a portion of the land claimed, such portion being included in both of the maps. The remainder of the land claimed was not included in the map of 1846-47. *Held* that a survey map is evidence of possession at a particular time, *viz.*, the time at which the survey was made, and may be evidence of title, but as to whether it is sufficient evidence or not, is a question to be decided in each particular case. *Held* further that, as the two maps showed that the portion of the land decreed to the plaintiff was in his predecessor's possession at the date of both surveys—that is to say, at two periods with an interval of nearly twenty years between them—they might be sufficient evidence of title, and the decree of the lower Court was correct. *Mohesh Chundra Sen* v. *Juggut Chundra Sen, I. L. R., 5 Calc., 212,* discussed. SYAM LAL SAHU *v.* LUCHMAN CHOWDHRY . I. L. R., 15 Calc., 353

29. ——— *Transfer of property—Surrender of dar-mokurari lease—Formal deed unnecessary.*—Where a mokuraridar granted a dar-mokurari lease of part of his holding which was afterwards surrendered for good consideration, ikrarnamas to this effect were executed, but, not being registered, were not receiveable in evidence. *Held* that to prove a formal deed of reconveyance was not necessary, the receipt of the money and the relinquishment of possession sufficiently showing what had become of the dar-mokurari interest. IMAMBUNDI BEGUM *v.* KAMLESWARI PERSHAD
[I. L. R., 14 Calc., 109
L. R., 13 I. A., 160

30. ——— *Hypothecation—Decree for enforcement of lien—Objection to attachment and sale raised by person not a party to decree—Release of property from attachment—Suit by decree-holder for declaration of right based on decree—Defence based on sale-deed found to be fraudulent—Plaintiff entitled to succeed on basis of his decree without further proof of title.*—An objection to the attachment and sale of a house which was advertised for sale in execution of a decree for enforcement of lien was allowed, upon the ground that the objector had purchased the house from the mortgagor, and his purchase was not subject to the decree, to which he was not a party. The decree-holder then brought a suit against the objector, claiming a declaration of his right to recover the amount due under his decree by enforcement of lien against the house, and that the order releasing the property from attachment should be set aside. The Courts below, holding that the deed of sale set up by the defendant was fraudulent and collusive, decreed the claim. *Held* that, although the defendant was not a party to the decree obtained against the mortgagor, yet, as the basis of his title to claim the property had been found to be a mere nullity, the plaintiff was entitled to succeed on the basis of the decree, which stood unimpeached, without being put to proof of the mortgage deed as against the defendant. KADIR BAKHSH *v.* SALIG RAM . . . I. L. R., 9 All., 474

31. ——— *Commission of partition.*—Under a commission of partition issued by the Supreme Court, land in Calcutta was apportioned among the members of a family, and the allotments were confirmed by final decree in 1825. In this suit, brought in 1884, the plaintiff claimed, through one of the family, a parcel of land, by reference to one of the allotments so made. The defence, which was made by setting up a title through the widow of him who received the allotment, was not proved; but the correctness of the area allotted was also in dispute, and the Appellate Court excluded part from the decree, made by the first Court for the whole. It appeared to the Judicial Committee that there was no ground for assuming that the members of the family, who were parties to the partition suit, were under any mistake as to the family property, or that there was any error, or want of due care, on the part of the commissioners of partition, whose proceedings had been regular; nor had there been any adverse claim to any part of the allotted land. The first Court's decree was restored. SARODA PROSUNNO PAL *v.* SHAM LAL PAL . . I. L. R., 19 Calc., 618
[L. R., 19 I. A., 75

32. ——— *Mirasi title—Payment of rent—Presumption.*—Continuous payment of rent for about a hundred years held to give

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued*

rise to a presumption that the tenant held under a mirasi title BRAJANATH KUNDU CHOWDHRY *v* LAKHI NARAYAN ADDI . . 7 B L. R., 211

33. ———— *Title confirmed by decree*—Where a proprietary title is affirmed by a decree, the property is not subsequently held under the decree alone, but under the original title AMRIT KOOER *v* ROOP KOOER

[2 N. W., 459: Agra, F. B., Ed. 1874, 240

(*b*) LONG POSSESSION

34. ———— *Title by long possession—Adverse possession—Limitation*—Twelve years' continuous possession of land by a wrong doer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrong doer *Semble*—Such title may be transferred to a third person whilst it is in course of acquisition, and before it has been perfected by possession GOSSAIN DASS CHUNDER *v* ISSUR CHUNDER NATH . I L R., 3 Calc., 224

See GOLUCK CHUNDER MASANTA *v* NUNDO COOMAR ROY

[I. L. R., 4 Calc., 699: 3 C. L. R., 450

35. ———— *Title by long possession—Adverse possession—Limitation—Grant made by wife during absence of husband*—A wife, during the prolonged absence of her husband, who was erroneously supposed to be dead, acting in excess of the limited powers of a wife in possession of her absent husband's property, made a mirasi grant of a portion of her husband's estate The grantee entered into and remained in possession for upwards of twelve years *Held* that the position of the grantee was not that of a lessee, and that his possession (although in its inception an act of trespass against the husband), having continued for upwards of twelve years, had perfected his title to the lands One who holds possession on behalf of another does not, by mere denial of that other's title, make his possession adverse, so as to give himself the benefit of the statute of limitation BEJOY CHUNDER BANERJEE *v* KALLY PROSONNO MOOKERJEE . . . . I. L. R., 4 Calc., 327

36. ———— *Declaration of title—Adverse possession—Variation between pleading and proof*—A declaration of title may be made upon proof of twelve years' adverse possession Such declaration cannot, however, be given on a title not distinctly stated in the plaint or in the issues. SHIRO KUMARI DEBI *v* GOVIND SHAW TANTI . . I. L. R., 2 Calc., 418

37. ———— *Suit for declaration of title—Failure to prove stated title—Title by long possession*—In a suit for a declaration of title to a share of landed estate, although the plaintiffs fail to satisfy the Court that their title to the land has been acquired in the way they state, yet if it is admitted that they have been in possession for more than twelve years the effect of such possession is to extinguish other titles, if these existed, and the plaintiffs ought to have the declaration sought. RAM LOCHUN CHUCKERBUTTY *v* RAM SOONDER CHUCKERBUTTY . 20 W. R., 104

JUGGUT CHUNDER *v* BANEE MADHUB BANERJEE [23 W. R., 205

38 ———— *Proof of title—Possession for period of limitation*—Plaintiff, [illegible]

that where a man seeks a declaration of a title other than the possession which he has, mere possession for the period of the statute will not justify the declaration, which, allowing it to be made ought to be based upon a finding of the title alleged by plaintiff, and not upon the existence of a possession for the period required by the statute to bar the action of another. Accordingly, the lower Appellate Court was required to return a finding on the issue "whether the title asserted by plaintiff is proved" TIRUMALASAMI REDDI *v* RAMA SAMI REDDI

[6 Mad., 420

39 ———— *Presumption arising from possession—Issue as to identity of land re-formed on a site formerly submerged*—In a suit for the possession of a chur, formerly carried away and afterwards re-formed upon its former site, the [illegible]

events they had a title by adverse possession. On an appeal the High Court considered that the latter decision was not upon the issue raised the plaintiff's claim being founded on an original title to the site of the chur, a title denied by the defendants and [illegible]

plaintiffs. Upon a second appeal the High Court reversed the decree of the Appellate Court and dismissed the suit, on the ground that there was an entire absence of evidence as to which party was entitled at the date to which the dispute related. *Held* that this was erroneous On a question of parcel or no parcel, when possession has been established for a period, there is not an entire absence of evidence of anterior ownership, because *presumitur retro* ANANGAMANJARI CHOWDHRANI *v* TRIPURA SUNDARI CHOWDHRANI

[I. L. R., 14 Calc. 740
L. R., 14 I. A., 101

40 ———— *Mokurrari mourasi title, Evidence of—Presumption of permanent tenure*—A person claimed to hold a mokurrari

TITLE—*continued.*

1. EVIDENCE AND PROOF OF TITLE —*continued.*

maurasi title to certain land which was acquired under the Land Acquisition Act, but could produce no pottah or evidence of title, other than certain rent receipts, which showed that he or his predecessors in title had held the land in question for nearly one hundred years at, presumably, a fixed rent, the nature of the tenure not being mentioned in such receipt. *Held* that the presumption was, in the absence of any evidence to the contrary, that the claimant had a permanent and transferable interest in the tenure and not merely an interest in the nature of a tenancy at will; and that this presumption was strengthened by the fact that his superior landlord, the lakhirajdar, had made no attempt to eject him or his predecessors in title during this long period. DUNNE *v.* NOBO KRISHNA MOOKERJEE . I. L. R., 17 Calc., 144

41. ———— *Suit to oust shebait from office—Tenure of office for a period greater than that provided by law of limitation.*—The plaintiff, as shebait of a certain Hindu endowment, instituted a suit to set aside certain leases and alienations created by one who had formerly been shebait, but who, it was alleged, had relinquished and abandoned the office on the ground that such leases and alienations were void and not binding on the endowment, and he sought to obtain khas possession of the lands occupied by the defendants under such leases and alienations. Although it was admitted that the plaintiff had held possession as shebait, and managed the properties connected with the endowment for more than ten years, on the nomination of the Hindu residents of the locality, the defendants put the plaintiff to proof of his title as shebait. The lower Courts found that the plaintiff had failed to prove his title, and, holding that on this ground he had no *locus standi*, dismissed the suit. *Held* that, as a suit to oust the plaintiff from his office would have been barred by limitation, by reason of his having held the office for a period exceeding that provided by the law of limitation, he had acquired a complete title for the purposes of any litigation connected with the affairs of the endowment, and that the suit had been wrongly dismissed on the ground that the plaintiff had failed to prove his title. JAGAN NATH DAS *v.* BIRBHADRA DAS

[I. L. R., 19 Calc., 776

42. ———— *Presumption of title—Onus of proof—Madras Forest Act (Mad. Act V of 1882), s. 6.*—Certain land was notified under the Madras Forest Act, 1882, to be constituted a reserved forest. A person, alleging that the jenm title had been in his family for six or seven centuries, claimed to be the owner of the land. His claim was contested by Government on the allegation that the land had belonged to another family and had been escheated. The claimant admitted that he had not been in possession for six years before the date of the notification, Government having objected to his interfering with the land. It was found that his family had been in possession for the previous sixty years at least, and that the alleged escheat was not proved. *Held* that the claim should be allowed. Observations on the burden of proof and on the presumption of title arising out of possession. SECRETARY OF STATE FOR INDIA *v.* BAVOTTI HAJI

[I. L. R., 15 Mad., 315

43. ———— Proof of title—*Suit for declaration of title—Adverse possession—Case made in plaint.*—Where a specific title has been alleged, but not proved, and the plaintiff endeavours to succeed in the first Court or second Court of appeal upon a title by twelve years' adverse possession, he must be prepared to show that this other title by twelve years' adverse possession was raised in the Court of first instance with sufficient clearness to enable his adversary to understand that he claimed to succeed as well by twelve years' adverse possession as by the specific title alleged. KRISHNA CHURN BAISACK *v.* PROTAB CHUNDER SURMA . I. L. R., 7 Calc., 560

44. ———— *Adverse possession—Unregistered deed of sale.*—On the 18th January 1876 plaintiff became purchaser at a Court's sale of the right, title, and interest of *G* and *N* in a shop, and, having been obstructed by defendant in obtaining possession of it, sued to recover it from him. The plaint was filed on the 27th January 1877. Defendant answered that he purchased it from *G* under a deed of sale dated 5th January 1865, and that he had been in possession since that day. The deed of sale was not admitted in evidence for want of registration, but it was found that defendant had been in possession as owner since 5th January 1865. *Held* that, although the defendant could not prove a title by purchase, it was open to him to establish his title without the aid of the deed of sale; that his possession of the premises for more than twelve years prior to the institution of the suit was adverse both to *G* and *N*, and that the claim of the plaintiff, who was assignee of their interest, was consequently barred *Balaram Nemchand* v. *Appa, 9 Bom., 121,* explained. *Somu Gurrukal* v. *Rangammal, 7 Mad., 13,* referred to and followed. SAMBHUBHAI KARSANDASS *v.* SHIVLALDASS SADASHIVDASS

[I. L. R., 4 Bom., 89

45. ———— *Long possession—Liability to assessment of revenue.*—A title to hold land free from assessment to revenue cannot be acquired by any length of possession revenue-free. SECRETARY OF STATE FOR INDIA IN COUNCIL *v.* RAM UGRAH SINGH . . I. L. R., 7 All., 140

2. MISCELLANEOUS CASES.

46. ———— Right to raise question of title—*Boundary dispute—Suit for possession.*—In a boundary dispute the title of the plaintiff is not, except under very peculiar circumstances, open to attack; but when the plaintiff sues for possession of property in the defendant's hands, not as forming part of another estate, but claiming a right thereto under a superior title, then the defendant has a right to call the plaintiff's title in question. RAMCHUNDER BANERJEE *v.* MUDDUNMOHUN TEWAREE

[W. R., 1864, 355

TITLE—*continued.*

2 MISCELLANEOUS CASES—*continued*

47. ———————— *Suit for possession of land held under superior holders*—The plaintiff sued to recover possession of certain lands said to have been included in a talukh pottah given him by the zamindars alleging that the defendants were obstructing his possession For the defence it was averred that these lands fell within a 9 annas share which belonged to one *D*, and that by process of sale they became the right of other parties under whom defendants held as lessees. *Held* that, notwithstanding the parties to this suit held under a superior landholder, plaintiff was entitled to have his title put in issue and determined. NAGUR CHAND *v* DOORGA DOSS CHOWDHRY

[11 W. R., 137

See DINOMONEE BANERJEE *v* GYRUTOOLLAH KHAN . . . 2 W. R., 138

48 ——— Onus probandi—*Proof of* ... *declara* ... nation ... must ... Indian ...

[19 W. R., P. C., 1

49. ———————— *Claim under particular title—Presumption* Where a plaintiff claims not under any general right of inheritance, but expressly under a deed he must prove that deed; no legal presumption as to the contents of the deed can arise from a consideration of what the party, through whom he claims, would have been entitled to by the law of inheritance, had there been such a deed MOOAD MULLICK *v* BELAT MULLICK

[9 W. R., 385

50. ———————— *Possession—Proof of title and possession Suit for injunction—Hindu law*—*K C*, a Hindu, died in March 1864, possessed among certain other property of a house, and leaving three sons, *R*, *B*, and *T* He also left a will, of which he appointed *R* executor, and declared that "the whole of my estate, both real and personal, and the existing shop you *R*, are the proprietor of the whole" *R* was directed to furnish the expenses of the household and carry on the shop, and pay for religious observances etc The testator then left legacies to his daughters and others but made no mention of his sons *B* and *T*. *R* applied for probate of the will and a caveat was entered by *B* but the opposition was withdrawn on a compromise, and the will was proved; the compromise, however, was never carried out In August 1866 *R* died, leaving a son, *M*, and his two brothers, *B* and *T*, surviving him and having made a will appointing *T* executor, and giving him the power of dealing with all the property *T* applied for probate but was opposed by *M* but on 23rd May 1867 probate was granted. On 26th March 1867 *B* and *T* mortgaged a two-thirds share in the house to the defendant, and, on default in payment of the mortgage-debt the defendant obtained a decree for payment or sale on 6th January 1868 On 17th August 1867 *T* mortgaged the whole house to the plaintiffs to secure payment of money borrowed to carry out *A*'s will The plaintiffs obtained a decree for foreclosure on 15th July ...

by the sale, the plaint prayed that the defendant ...

ROOPLALL KHETTRY *v*. MOHENDRA NATH ROY

[10 B. L. R., 271 note

51 — — False deed set up in support of rightful claim.—A party is not precluded from succeeding upon a title established by a genuine deed, because he sets up a false deed which, if treated as a conveyance and not as a mere confirmation, may be inconsistent with that title PATTABHIRAMIER *v* VENCATAROW NAICKEN

[7 B. L. R., P. C., 136: 15 W. R., 35
13 Moore's I. A., 560

52 ——— Transfer of property—*Relinquishment of dar-mokurari lease Necessity for conveyance*—Where a dar-mokurari has been granted and then relinquished for valuable consideration to the grantors, no formal reconveyance is necessary to revest the title in the latter IMAMBANDI BEGUM *v* KUMLESWARI PERSHAD

[I. L. R., 13 I. A., 160: I. L. R., 14 Calc., 109

TITLE DEEDS.

See EXECUTION OF DECREE—MODE OF EXECUTION—POSSESSION

[I. L. R., 11 Bom., 485

See VENDOR AND PURCHASER—TITLE

[I. L. R., 15 Bom., 657

——— Delivery of, for specific purpose

See ATTORNEY AND CLIENT

[15 B. L. R., Ap., 15

——— Deposit of—

See CASES UNDER DEPOSIT OF TITLE-DEEDS

See INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR 6 B. L. R., 701
[I. L. R., 19 All., 76
L. R., 23 I. A., 106

See NEGOTIABLE INSTRUMENTS ACT, s. 13
[I. L. R., 17 Mad., 85

TITLE-DEEDS—*concluded.*

——— Possession of—

See EVIDENCE—CIVIL CASES—MODE OF DEALING WITH EVIDENCE.
[2 W. R., P. C., 1
8 Moore's I. A., 467

See REGISTRATION ACT, 1877, s. 50.
[I. L. R., 18 Bom., 444

——— Production of—

See INSPECTION OF DOCUMENTS.
[5 Bom., O. C., 152
I. L. R., 10 Calc., 808

See ONUS OF PROOF—DECLARATION OF TITLE . . . 6 B. L. R., 144

See TITLE—EVIDENCE AND PROOF OF TITLE—GENERALLY 6 B. L. R., 144
[18 W. R., 162

——— Refusal to produce—

See RIGHT OF WAY.
[I. L. R., 15 All., 270

——— Suit to recover—

See JURISDICTION—SUITS FOR LAND—GENERAL CASES I. L. R., 4 Calc., 322

See LIMITATION ACT, 1877, ART. 49.
[I. L. R., 15 Mad., 157

TITLES OF HONOUR.

See PLAINT—FORM AND CONTENTS OF PLAINT—DEFENDANTS.
[12 B. L. R., 443, 445 note

TODA GARAS HAQ.

See DUTIES.
[2 Bom., 253: 2nd Ed., 239
7 Bom., A. C., 50

See LIMITATION ACT, 1877. ART. 144—IMMOVEABLE PROPERTY.
[13 B. L. R., 254
L. R., 1 I. A., 34

See PENSIONS ACT, 1871, SS. 3 AND 4.
[I. L. R., 1 Bom., 203
I. L. R., 4 Bom., 443
I. L. R., 5 Bom., 408
L. R., 8 I. A., 77

See PENSIONS ACT, 1871, s. 11.
[I. L. R., 4 Bom., 432

TODDY.

See BOMBAY ABKARI ACT, 1878, SS. 3, 14, AND 24 . . I. L. R., 6 Bom., 398
[I. L. R., 9 Bom., 462
I. L. R., 18 Bom., 428

See BOMBAY REVENUE JURISDICTION ACT, 1876 . . I. L. R., 9 Bom., 462

TOLLS.

See SETTLEMENT—CONSTRUCTION.
[I. L. R., 17 Calc., 458

——— Lease of—

See BOMBAY TOLLS ACT, s. 7.
[I. L. R., 20 Bom., 668

——— Non-liability to—

See MADRAS LOCAL BOARDS ACTS, s. 87.
[I. L. R., 20 Mad., 16

——— Suit for, paid in excess.

See BENGAL ACT IX OF 1871, s. 27.
[I. L. R., 15 Calc., 259

1. ——— Lessee of tolls—*Act VIII of 1851.*—A lessee of tolls was held not to be a person employed in the management and collection of tolls within the meaning of Act VIII of 1851. IN THE MATTER OF BANKA BIHARI GHOSE
[2 B. L. R., A. Cr., 17: 11 W. R., 26

2. ——— Illegal collection of tolls—*Act VIII of 1851, s. 6—Public road.*—To justify a conviction under s. 6, Act VIII of 1851, for illegal collection of a toll on a public road, it was necessary that the road should be a public road within the meaning of s. 2 of the Act. IN RE NARENDRONARAIN SINGH . . . . . 6 W. R., Cr., 48

3. ——— Illegal demand of toll—*Act VIII of 1851, s. 6—Summary offence.*—A charge of an illegal demand of toll under Act VIII of 1851, s. 6, ought not to be dealt with summarily under Ch. XVIII of the Criminal Procedure Code, 1872. The power of levying tolls under Act VIII of 1851 is vested in the Lieutenant-Governor of Bengal, and is restricted to levying tolls only at the toll-bar: the establishment of a toll must be, by some distinct resolution of the Government, notified in some way or other by the Government. The word "extortionately" in s. 6 of Act VIII of 1851 is not used in the same sense as it is used in the Penal Code, but as meaning an unlawful demand of toll accompanied by pressure, the pressure in this case being the exercise of the powers indicated in s. 3 of the Act by seizing the complainant's horses and carts and detaining them until the toll was paid. UTTOM CHUNDER GANGOOLY v. ISSUR CHUNDER MOOKERJEE
[22 W. R., Cr., 76

TORT.

See CASES UNDER DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS.

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS.

See ENCROACHMENT.
[I. L. R., 17 Mad., 368

See MINOR—LIABILITY FOR TORTS.
[3 N. W., 191

——— Action framed in—

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS.
[I. L. R., 24 Calc., 265

TORT—*concluded*

See RIGHT OF SUIT—SURVIVAL OF RIGHT [I. L. R., 13 Bom., 677

See WRONGFUL DISTRAINT. [I. L. R., 25 Calc., 285

TORT FEASORS

See CASES UNDER CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS .

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES [I. L. R., 14 Bom., 408

TORTURE

See ABETMENT—TORTURE [7 W. R., Cr., 3 21 W. R., Cr., 11

See POLICE OFFICER . 7 W. R., Cr., 3

TOTAL LOSS

See INSURANCE—MARINE INSURANCE [6 B. L. R., 218; 7 B. L. R., 347 3 Bom., A. C., 1 Bourke, O. C., 17, 228

TOWAGE, LIEN FOR—

See BOTTOMRY BOND . 6 B. L. R., 323

TOWAGE CONTRACT

See ACTION IN REM [I. L. R., 10 Calc., 865

TOWING, RULES FOR

See STEAM TUGS . 1 Hyde, 293 [2 W. R., P. C., 51: 8 Moore's I. A., 103

TOWN DUTIES, BOMBAY

———— Act XIX of 1844—*Suit to levy a tax on cotton and cotton seeds purchased in, and exported from, Broach—Cess illegal—Agency—Trust.*—The plaintiff, manager and part proprietor of a Vallabhacharya temple at Broach, sued the defendant to establish the right of the temple to levy a cess on cotton and cotton seed purchased in Broach and exported from it. The defendant denied the plaintiff's right and contended (*inter alia*) that, even if the right existed until 1844, it was then abolished by Act XIX of that year, which "enacted that from the first day of October 1844 all town duties, kusubvéras, mohtarphas, baluti taxes, and cesses of every kind on trades and professions, under whatsoever name, levied within the Presidency of Bombay, and not forming a part of the land revenue, shall be abolished." *Held* that Act XIX of 1844 applied to the cess claimed by the plaintiff. The expression "cesses of every kind" included the cess on cotton and cotton seeds, and absolutely put an end to the right, if any existed, of the Government or of any private individual of levying the same. *Held* also the suit could not be regarded as a suit for money had and received by the defendant to the plaintiff's use, or as one to recover money received by the defendant as trustee or agent. GOSVAMI SHRI PURUSHOTAMJI MAHARAJ *v.* ROBB [I. L. R., 8 Bom., 398

TRADE.

——— Contract in restraint of—

See CASES UNDER CONTRACT ACT, s. 27

TRADE MARK.

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS [I. L. R., 10 Bom., 817

See INJUNCTION—SPECIAL CASES—TRADE MARK 3 B. L. R., Ap., 4 [Cor., 150 I. L. R., 17 Bom., 584

1. ———— Injunction to restrain use of trade marks—*Combination of figures*—The plaintiffs, from 1872, imported and sold an article described as 7¼lb grey shirtings, and marked as follows: "In the centre of each piece of cloth a stamp in blue colour of a turtle in a star, with the words 'trade mark', underneath, in a semi-circular form, is the name 'Fleming, Galbraith & Co., Manchester,' and under this the number 30 with in a star, and at the bottom of each piece the number 2008." In 1877 the plaintiffs discovered that the defendants were importing from the same manufacturers, and selling cloth of a similar quality marked as follows: "A stamp in blue colour of a rose in a square, underneath are the words 'Ralli and Mavrojani' arranged in a semi-circular form and under this the number 30 in a star, and at the bottom the number 2008." On the facts of the case the lower Court (MACPHERSON, J.) granted an *interim* injunction to restrain the defendants from so marking their cloth on the ground that it was a colourable imitation of the plaintiff's mark and calculated to mislead the public; and on appeal the Court (GARTH, C.J., and MARKBY, J.) upheld that decision so far as to continue the injunction. *Held per* GARTH, C.J.—If the imitation of the plaintiffs' marks generally, or the use of the number 2008 in particular would be calculated to deceive or mislead the public, the [illegible] from such use or [illegible] of their [illegible] lated to [illegible] ey were purchasing goods imported by the plaintiffs. *Per* MARKBY, J.—The number 2008 was not part of the plaintiffs' trade mark proper, nor on the evidence was it so associated with the plaintiffs' name as to indicate to the public that the goods bearing that number came only from the plaintiff's firm as importers; on the evidence it was merely a quality mark, and therefore

TRADE MARK—*continued.*

not calculated to mislead the public into the belief that they were purchasing the plaintiffs' goods, while in fact they were purchasing those imported by the defendants. *Semble*—There may be a right to exclusive use of a trade mark by traders who are importers only. RALLI *v.* FLEMING [I. L. R., 3 Calc., 417: 2 C. L. R., 93

2. ——— Right to use of trade mark—*Rival traders—Similarity of name.*—No trader importing goods can lawfully adopt a trade mark which is calculated to cause his goods to bear in the market the same name as those of a rival trader. TAYLOR *v.* VIRASAMI . . I. L. R., 6 Mad., 108

3. ——— Restraining use of trade mark—*Evidence of fraud.*—The ground upon which a person is restrained from using another's trade mark is that he is gaining an advantage by the use of a particular trade mark which is the property of another. It is not necessary to prove intentional fraud, or to show that persons have been actually deceived. It is sufficient if the Court be satisfied that the resemblance is such as would be likely to cause the one mark to be mistaken for the other. EWING *v.* GRANT, SMITH & CO. . 2 Hyde, 185

BALFOUR & CO. *v.* KILBURN & CO. [1 Hyde, 270

4. ——— Possession and use of trade mark—*User in foreign market—Abandonment—Estoppel by conduct.*—Such possession and use of a trade mark in one market as to constitute a right in it establishes in the owner thereof an exclusive right to that trade mark in other markets, although the owner may not have used it in such markets. To constitute a mark a trade mark, it must have been adopted as a symbol devised to distinguish a particular class of goods as the goods of that class manufactured or selected by a particular manufacturer or merchant. Where the plaintiffs by their conduct let the defendant to believe that they claimed no right to a certain trade mark, and that it was open to the defendant to adopt it as his own, and the defendant did adopt it, and by his industry secured a wide popularity for it in the Indian market,—*Held* that the plaintiffs were estopped from denying the defendant's right to use the trade mark in the Indian market. LAVERGNE *v.* HOOPER [I. L. R., 8 Mad., 149

5. ——— Right of exclusive user—*Infringement—Combination of numerals as a trade mark—Injunction.*—The question of the right to the exclusive user of a trade mark or trade number is largely, if not entirely, a question of fact, and the question whether it exists in any given case must depend upon whether the evidence in that case is sufficient to show such an association or connection between the mark or the number and the firm which uses it as to indicate to the ordinary purchasers in the market that the goods are the goods of that particular firm. To show that a particular trade number has acquired a reputation in the market, and that purchasers buy the goods by that number and not from an examination of the nature or quality of the cloth, is not sufficient to establish the

TRADE MARK—*continued.*

right of exclusive user of that number. There must be such an association between the number and the firm's name as to indicate in the understanding of the public that the goods bearing that number came from that particular firm. The right of exclusive user of a name or a number as a trade mark is not an absolute and unqualified right which would entitle the owner to prevent another person from using it under all circumstances. It is only when the use of that name or number deceives or is reasonably likely to deceive the public that it can be interfered with or prevented. There must be a reasonable probability of purchasers being deceived; it is not enough to show a mere possibility of deception. BARLOW *v.* GOBINDRAM [I. L. R., 24 Calc., 364
1 C. W. N., 281

6. ——— Offence of using false or counterfeit trade-mark—*Penal Code (Act XLV of 1860), ss. 482, 486 - Prosecution after one year from first discovery of offence—Limitation—Merchandise Marks Act (IV of 1889), s. 15.*—A complainant having, in 1893, discovered that goods were being sold marked with what was alleged to be a counterfeit trade-mark, called upon the persons so selling to discontinue the use of the said alleged counterfeit trade-mark and to render an account of sales. The right to proceed further was reserved, but no action was then taken. In 1898, upon its being ascertained that the same trade-mark was being used, a prosecution was commenced. *Held* that, inasmuch as the complainant had not shown that he believed the use of the alleged counterfeit trade-mark had been discontinued after his first discovery and complaint in 1893, the prosecution was time-barred under s. 15 of the Indian Merchandise Marks Act, 1889; and that the complainant must enforce his remedy by civil process. RUPPELL *v.* PONNUSAMI TEVAN [I. L. R., 22 Mad., 488

7. ——— Selling books with counterfeit property mark—*Penal Code (Act XLV of 1860), s. 486—Goods—Indian Merchandise Marks Act (IV of 1889).*—Books are the subject of trade, and are goods within the meaning of s. 2, cl. (4), of the Indian Merchandise Marks Act (IV of 1889); therefore, when a person sells books with a counterfeit property mark, he commits an offence under s. 486 of the Indian Penal Code. KANAI DAS BAIRAGI *v.* RADHA SHYAM BASACK . I. L. R., 26 Calc., 232
[3 C. W. N., 97

8. ——— User of and property in trade mark—*Proof of trade mark—Importation and sale of articles with particular marks impressed upon them—Succession by one Bank to business of another—Merchandise Marks Act (IV of 1889), s. 3—Penal Code (Act XLV of 1860), ss. 485 and 486.*—A mark to be a trade mark must be a mark used for denoting that the goods are the manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally theirs, but belonged to a Bank that had ceased to exist and where there was no proof of any transfer or assignment of the mark, or that the new Bank succeeded the other in the sense either that

TRADE MARK—*concluded.*

it was a continuation of that Bank under another ... acquired ... be ... rk ... QUEEN EMPRESS I. L. R., ... 76

ANOOKOOL CHUNDER NUNDY *v.* EMPRESS [4 C W N, 423

TRADER

See INSOLVENT ACT s 7
[I. L R, 7 Bom., 411
I. L. R, 13 Calc, 63

See INSOLVENT ACT s 9
[I. L R., 5 Calc, 605
I. L R., 20 Calc, 771
I L R., 23 Calc, 28
L R., 22 I A, 182

See INSOLVENT ACT, s 6J
[I. L. R., 5 Bom, 1
2 Hyde, 1, 177
7 Bom, O C 22
I L R, 21 Calc, 1018

See MADRAS DISTRICT MUNICIPALITIES ACT, 1884 s 53
[I. L R., 17 Mad., 100

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See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—GENERALLY
[I. L. R., 2 Bom, 570

TRAFFIC SUPERINTENDENT OF RAILWAY.

See RAILWAYS ACT 1890, s 77
[I L R, 24 Calc, 306
I. L R., 22 Mad, 137

TRAMWAYS.

See BOMBAY TRAMWAYS ACT
[I L R., 22 Bom, 730

TRANSFER

——— Instrument of—

See STAMP ACT, 1869 sch II art 33.
[I L. R., 2 Calc, 399

——— Registration of—

See CASES UNDER BENGAL RENT ACT, 1869, s 26.

See CASES UNDER BENGAL RENT ACT, 1869, s 46.

See CASES UNDER LANDLORD AND TENANT—ACKNOWLEDGMENT OF TENANCY BY RECEIPT OF RENT

See CASES UNDER LANDLORD AND TENANT—TRANSFER BY TENANT

See SALE FOR ARREARS OF RENT—DEPOSIT TO STAY SALE . 13 B. L. R., 140

TRANSFER—*concluded*

See SALE FOR ARREARS OF RENT—EFFECT OF SALE . . 9 W R., 161
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1 W. R., 225

TRANSFER OF CIVIL CASE

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1 GENERAL CASES	9150
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1 GENERAL CASES

1 ——— Power to transfer—*Mad Reg* ... *Village Munsif—Jurisdiction*— ...

that this transfer was illegal ... *Semble*—In such a case the Village Munsif should report the facts to the District Court and the District Judge should transfer the case for trial to another Village Munsif LAKSHMAKKA *v.* BALI
[I. L. R., 8 Mad, 500

2 ... *Transfer to Munsif* ... *of Small Cause* ... nizance of the S ... transferred for ... CHOWKEEDAR *v.* WHELAN ...

3 ——— *Case remanded for local inquiry*—A case remanded to a District Judge for the purpose of a local inquiry cannot be transferred to a Subordinate Judge for disposal CHOWDRY HAMEDOOLLAH *v.* MUTEEOONISSA BIBEE
[15 W R., 574

4. ——— *Power of Judge to transfer case under Act XVI of 1868*—A Judge had no authority under Act XVI of 1868 to order a ... to try proceedings in execution of ... al civil suit ... v. MOHI ... V R., 48

5 ——— *Bengal Civil Courts Act VI of 1871, s 19*—Though a Subordinate Judge may very properly, if he find the subject matter of a suit to be of the value of less than R1,000 transfer it for trial to a Munsif, yet a Subordinate Judge is empowered under s. 19 Act VI of 1871 to try causes of any value SUFEEOOLLAH SIRCAR *v.* BEGUM BIBEE . 25 W R., 219

6 ... *Civil Procedure* ... *from subordi* ... *Fresh suit* ... of 1859 to a ... ts from subor- ... upon a cause ... ortunity given ...

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

from a Court to which the District Court was itself subordinate. A suit sent by the High Court to a subordinate Court under a remand to the High Court by Her Majesty's Order in Council, and in which, under the Council's remand order, the plaint has been amended, a new statement filed, and new issues framed, is substantially a new suit. MAHOMED ZAHOOR ALI KHAN *v.* RUTTA KUNWOOR **2 N. W., 481**

7. ——— *Civil Procedure Code (1882), s. 25—Suit transferred to his own file by District Judge—Appeal to High Court—Remand to District Judge under s. 562 of the Civil Procedure Code—Power of Judge to transfer.*—By order of a District Judge under s. 25 of the Code of Civil Procedure a suit was transferred from the Court of the Subordinate Judge to his own Court. The District Judge decided the suit, and from his decree there was an appeal to the High Court. The High Court remanded the suit under s. 592 of the Code to the Court of the District Judge. The latter transferred the suit so remanded for trial to the Subordinate Judge. *Held* that the District Judge had then no power to transfer the suit, but was bound to try it himself. *Semble*—That s. 25 of the Code of Civil Procedure has no application to a case remanded under s. 562 of the Code. SITA RAM *v.* NAUNI DULAIYA **[I. L. R., 21 All., 230**

8. ——— *Civil Procedure Code, 1859, s. 6—Transfer of part-heard case to be completed in another Court.*—S. 6 of Act VIII of 1859 did not authorize the taking a case in progress of trial off the file of a Subordinate Judge in order that it might be completed by the Judge himself of some other Court. It is clear that such transfer must take place on the institution of the suit. RAM NATH *v.* GOWHUR . . . **2 N. W., 230**

DUMREE SAHOO *v.* JUGDHAREE . **13 W. R., 398**

ABDOOL HYE *v.* MACRAE . . **23 W. R., 1**

9. ——— *Civil Procedure Code, 1859, s. 6—Transfer after evidence has been taken.*—*Quære*—Whether a case could be transferred from one Court to another, under s. 6, after the evidence had been taken in the former Court. ASMEDH KOONWAR *v.* TAYLER. KHORSHED ALI *v.* TAYLER . . . . **W. R., 1864, 15**

10. ——— *Civil Procedure Code, 1859, s. 6—Suit brought whilst Court is closed for vacation.*—The Court of the Principal Sudder Ameen of Thanna being closed during vacation, a plaint which, under s. 6 of the Civil Procedure Code, ought to have been instituted in that Court, was, by the order of the District Judge, referred for trial to the Assistant Judge, entered in the register of suits in the Judge's Court, and tried by the Assistant Judge. *Held*, reversing the decree of the District Court in appeal, that it was not lawful for the Judge to refer the suit, without its having first been instituted in the Principal Sudder Ameen's Court. MOTILAL RAMDAS *v.* JAMNADAS JAVERDAS . . **2 Bom., 42: 2nd Ed., 40**

11. ——— *Civil Procedure Code, 1859, s. 6—District Court—Power to receive plaint when lowest Court closed.*—Where a plaintiff presented a plaint to the District Court, the Subordinate Judge's Court, in which he ought to have presented it, being then temporarily closed, it was held that the District Court could not be considered a Court of first instance, competent to receive the plaint. The decision in *In re Ganesh Sadashiv, 5 Bom., A. C., 117*, overruled; and *Motilal Ramdas v. Jamnadas Javerdas, 2 Bom., A. C., 42*, followed. RAMAYA ELAPA *v.* MUHAMADBHAI . **10 Bom., 495**

12. ——— *Civil Procedure Code, 1859, ss. 5 and 6—Jurisdiction.*—*Held* that, though both suits were properly cognizable by the Court at Cawnpore, yet the Sudder Court's order, which it was competent to pass under s. 6, Act VIII of 1859, gave jurisdiction to the Principal Sudder Ameen of another district, whose decision was not liable to be set aside for want of jurisdiction, in reference to the provisions of s. 5 of that enactment. RAM BUX *v.* GIRDHAREE LALL . **1 Agra, 178**

13. ——— *Evidence recorded by one officer and decision given by another.*—A suit for enhancement was filed under Act X of 1859, in the Court of a Deputy Collector. The issues were framed and the evidence recorded by an Assistant Collector, apparently not invested with the powers of a Deputy Collector, who wrote a report recommending the mode in which the suit should be disposed of. It was then disposed of by another Deputy Collector, who was probably acting at the time as Collector. *Held* that there was no power to transfer the case, and that the procedure by which the suit was heard by one officer and decided by another was illegal. HURDYAL OOPADHYA *v.* MAHOMED NAEEM **1 N. W., Part II, p. 9: Ed. 1873, 79**

14. ——— *Civil Procedure Code, 1859, ss. 5 and 6.*—Where a District Court had jurisdiction under s. 5, Act VIII of 1859, to try a suit, and defendant made no application to the Judge or communication to the plaintiff, with a view to its being tried in a different district, the case was held to be not one for the exercise of any special power by the High Court for that purpose. KRISTO DASS KOONDOO *v.* ISSUR CHUNDER CHOWDHRY **[11 W. R., 189**

15. ——— *Civil Procedure Code, 1859, s. 6—Notification giving jurisdiction as Small Cause Court—Power to transfer pending cases.*—Where, on 3rd March 1870, the Government issued a notification under ss. 4 and 5, Madras Act IV of 1863, investing the Additional Principal Sudder Ameen of Mangalore with exclusive jurisdiction to try Small Cause suits for sums under R500 within the jurisdiction of the District Munsif,—*Held* that the Munsif had no power after the notification to transfer to the Principal Sudder Ameen an application pending before himself at the date of the notification under s. 6 of the Civil Procedure Code,

TRANSFER OF CIVIL CASE—*continued.*

1 GENERAL CASES—*continued*

1859, the notification not being retrospective in its operation NARAYANA MALYA *v* GOVIND SHETTY [6 Mad., 18

16. ——— *Civil Procedure Code, 1859, s 13—Power of Sudder Courts—* S. 13, Act VIII of 1859, enacted that, where a suit was brought for immoveable property situated within districts subject to different Sudder Courts the Judge in whose Court the suit was brought should apply to the Sudder Court to which he was subject for authority to proceed, and the Sudder Court to which the application was made, with the concurrence of the other Sudder Court within whose jurisdiction the property was partly situated, might give authority to proceed But no power was expressly given in the section cited, or elsewhere in the Act, to direct the transfer of a suit brought in a Court subordinate to one Sudder Court to a Court subordinate to another Sudder Court *Quære*—Whether Sudder Courts acting in concurrence had power to make such a transfer SKINNER *alias* NAWAB MIRZA *v* ORDE [I. L. R, 2 All, 241

17. — *Civil Procedure Code, 1859, s. 13—Family domains of the Maharaja of Benares Held*, following S A No 963 of 1877, decided the 14th December 1877, that the provisions of s 13 of Act VIII of 1859 were not appli-

18 ——— *Civil Procedure Code, 1877, s 24—Place of suing—Grounds of transfer*—S 24 of the Civil Procedure Code does not empower a High Court to transfer a suit instituted within its own jurisdiction to the jurisdiction of another High Court, but only to declare in which Court a suit shall proceed, and, if necessary, to stay all further proceedings within its own jurisdiction The defendants in a suit instituted at Mainpuri who resided and carried on business at Surat,

favour of either justice or convenience on the side of the Surat Court, the suit should proceed at Mainpuri TULA RAM *v* HARJIWAN DASS I L. R., 5 All, 60

19 ——— *Civil Procedure Code, 1877, s 25—Power of High Court*—The High Court cannot make an order of transfer of a case under s 25 of the Code of Civil Procedure unless the Court from which the transfer is sought to be made has jurisdiction to try it PEARY LALL MOZOOMDAR *v* KOMAL KISHORE DASSIA [I. L. R., 6 Calc, 30

20. ——— *Civil Procedure Code 1882, s 25—Jurisdiction*—An order for the transfer of a suit from one Court to another under

TRANSFER OF CIVIL CASE—*continued*

1 GENERAL CASES—*continued*

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30, entirely approved LEDGARD *v* BULL [I. L. R., 9 All, 191 L. R., 13 I. A., 134

21. ——— *Civil Procedure Code, 1877, s. 25—Transfer from Court in which a suit has been wrongly instituted* A suit for the infringement of certain inventions, instead of being instituted in the Court having by virtue of s 22 of Act XV of 1859, jurisdiction to entertain it, was instituted in a Court subordinate to such Court not

jurisdiction had properly tried the suit PETMAN *v* BULL I L R, 5 All, 371

But held by the Privy Council (reversing this decision) that under s 25 of the Civil Procedure Code the

L., 6 Calc, 30, approved A suit having been instituted in the Court of the Subordinate Judge who was incompetent to try it, the case was transferred by consent of parties to the Court of the District Judge for convenience of trial *Held* that such transference was incompetent, and that such consent did

22. ——— *High Court, Jurisdiction of—District Judge Jurisdiction of—Appeal Appeal withdrawn from the District Court Civil Procedure Code (Act XIV of 1882), s 25*—An appeal the subject matter of which was over R5 000 in value was wrongly presented and filed

Bull, I. L. R., 9 All., 191 L. R., 13 I. A., 134,

TRANSFER OF CIVIL CASE—*continued.*

1. GENERAL CASES—*continued.*

referred to. RAM NARAIN JOSHY *v.* PARMESWAR NARAIN MAHTA . I. L. R., 25 Calc., 39

23. ——— *Winding-up Company—Transfer of winding-up from District Court to High Court—Companies Act VI of 1882, s. 219—Civil Procedure Code, ss. 25, 647—Stat. 24 & 25 Vict., c. 104, s. 15—Letters Patent, High Court, N.-W. P., s. 9.*—There is nothing in the Indian Companies Act (VI of 1882) or the High Court's Act (24 & 25 Vict., c. 104) or the Letters Patent which prevents the High Court from calling for the record of the proceedings in the winding-up of a Company under the Companies Act, and transferring those proceedings to its own file. Such a power is given to the High Court by s. 647 read with s. 25 of the Civil Procedure Code. Where, in the proceeding in the winding-up of a Company under Act VI of 1882, an order was passed admitting the proof of a particular creditor of the Company before any liquidator had been appointed,—*Held* that this was an irregularity which by itself would justify the High Court in sending for the record. Where the District Judge conducting the proceedings in the winding-up of a Company under Act VI of 1882 had, after receiving notice of the admission by the High Court of a petition for transfer of those proceedings to its own file, drafted and placed upon the record an order which it might have been difficult for him to reconsider if the matter again came before him, and where the case appeared to be one in which serious questions of law were likely to arise which it would probably be difficult to discuss adequately in the District Court, in the absence of the authorities upon the subject and of any rules framed by the High Court for dealing with windings-up under the Act, and the case was of a kind which would probably come before the High Court in a variety of appeals from orders brought by one side or the other,—*Held* that, under these circumstances, the case was a proper one for the exercise of the High Court's jurisdiction by calling up the winding-up proceedings to its own file. IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY

I. L. R., 9 All., 180

24. ——— *Civil Procedure Code, 1882, s. 25—District Court, Power of, as to suit pending in its own Court—Ultra vires.*—S. 25 of the Civil Procedure Code (Act XIV of 1882) only enables a District Court to transfer a suit pending in a Court subordinate to itself, and not to transfer a suit which is pending in its own Court. Accordingly, where a District Judge made an order to retransfer to the original Court certain suits pending in his Court which had been previously transferred to his Court from a Subordinate Court,—*Held* that the order of retransfer was *ultra vires* and should be discharged. SAKHARAM *v.* GANGARAM I. L. R., 13 Bom., 654

25. ——— *Civil Procedure Code (Act XIV of 1882), s. 25—Transfer of execution proceedings—Insolvency proceedings—Opposing creditor's right to apply for transfer of insolvency proceedings.*—The power of transfer given by s. 25 of the Code of Civil Procedure extends to execution proceedings as well as to suits. An application to be declared an insolvent under the Civil Procedure Code is a proceeding in execution, and as such can be made the subject of an order under s. 25 of the Code. A creditor who has received notice of an insolvency petition, and whose name is entered on the record of the execution proceedings as an opposing creditor, is a "party" within the meaning of s. 25 of the Code of Civil Procedure, and may apply for a transfer of the proceedings under the section. NASSARVANJI *v.* KHARSEDJI DHUNJISHAH

I. L. R., 22 Bom., 778

26. ——— *Ganjam and Vizagapatam Agency Courts Act (XXIV of 1839)—Validity of Agency Rule No. 22 passed under the Act—Jurisdiction of High Court to transfer suit pending in the Agent's Court to the District Court—High Courts' Charter Act (24 & 25 Vict., c. 104), s. 15.*—An order was made by a single Judge by consent of the parties, transferring a case from the Court of an Agent to the Governor, Vizagapatam, to a District Court. A further order was made by a single Judge, which, though in form an order dismissing a review petition against the first-mentioned order, was in substance an adjudication upon the question whether the High Court has jurisdiction to order the transfer of a suit from the Court of such an Agent to a District Court. *Held* that the High Court has no jurisdiction to transfer a suit pending in the Court of the Agent to the Governor, Vizagapatam, to the District Court of Vizagapatam; and that Agency Rule No. 22 made in 1840, under the powers conferred by Act XXIV of 1839, is a valid rule. MAHARAJAH OF JEYPORE *v.* PAPAYYAMMA

I. L. R., 23 Mad., 329

27. ——— *Civil Procedure Code, 1882, s. 331—Claim below ordinary pecuniary limit.*—By virtue of s. 647 of the Code of Civil Procedure, a superior Court may, for sufficient cause, transfer a claim, registered under s. 331, to a subordinate Court for trial. SITHALAKSHMI *v.* VYTHILINGA . . . I. L. R., 8 Mad., 548

28. ——— *Reasons for transfer—Amending issues—Procedure on transfer.*—The mere transfer of a suit for the convenience of the public, or for the acceleration of business, from one subordinate Court to another, does not affect the authority of the Judge of the District Court to transfer it to his own file, or to another Court, or to re-transfer it, if he see sufficient cause for so doing; nor would the circumstance that a case had been up on appeal to the High Court on a preliminary point, and been remanded for a trial on the merits, limit the authority of the District Court Judge to bring it upon his own file, or to transfer it to the file of a Court other than that in which it was instituted. The omission of the Judge to assign his reason for transferring the case does not vitiate his proceeding. When a Judge transfers a case to his own file, he is at liberty to amend the issues first laid down, and to raise additional issues, and to go into the whole case, except upon any question upon which there has been

TRANSFER OF CIVIL CASE—*continued*

1 GENERAL CASES—*continued*

a judicial finding TARUCKNATH MOOKERJEE *v* GOUREE CHURN MOOKERJEE 3 W R, 147

20 ——— Procedure on transfer—

SINGH 8 W R., 465

30 ——— *Civil Procedure Code, 1882 s 25—Court to which suit is transferred not taking fresh evidence*—Where the trial of a suit was commenced by a Subordinate Judge and then transferred by the District Judge to his own file under s. 25 of the Civil Procedure Code, and the latter did not retake the evidence but dealt with the case as it came to him from the Subordinate Judge

31. ——— *Case referred to arbitration—Power of Judge to decide after transfer*—A case having been withdrawn by the Judge for trial in his own Court from the Principal Sudder Ameen's Court where it had already been referred to arbitration—*Held* that the Judge was quite competent to decide the case himself, without necessarily being bound also to refer it to arbitration ABOO MAHOMED *v* KISHEN MOHUN SURMA

[6 W. R., 290

32 ——— *Suit pending in Court of Subordinate Judge with Small Cause Court powers—Transfer to Munsif's Court—Civil Procedure Code, s 25—Munsif, Jurisdiction of—Subordinate Judge, Jurisdiction of—Provincial Small Cause Courts Act (IX of 1887), s 35* The plaintiff filed his suit as a Small Cause Court case in

consequence of this, the District Judge made an order, under s. 25 of the Code of Civil Procedure transferring all cases above the value of R50 then pending before the Subordinate Judge in his capacity as a Small Cause Court to the Munsif to be tried as Munsif's Court cases The Munsif had Small Cause Court powers up to R50 The plaintiff's suit was for R69 The case was accordingly tried by the Munsif and the plaintiff appealed, his appeal coming before the same Subordinate Judge before whom the suit was filed *Held* that granted that the suit was a Small Cause Court suit (which was not decided) whether

TRANSFER OF CIVIL CASE—*continued*

1 GENERAL CASES—*concluded.*

33 ——— *Civil Procedure Code (1882), s 25—"Court of Small Causes"—Meaning of the expression—A Court invested with Small Cause Court powers*—The expression "a Court of Small Causes" in the last clause of s 25 of the Code of Civil Procedure (Act XIV of 1882) means a Court properly and strictly so called and

34 ——— *Transfer of suit by order of High Court—Duty of Court to which transfer is made*—When a suit has been transferred by an order of the High Court from the Court of a Subordinate Judge to the Court of the District Judge for trial it is the duty of the District Judge to try the suit himself and he is not competent to transfer the suit back to the Court of the Subordinate Judge FATIMA BIBI *v* ABDUL MAJID

[I L. R., 14 All, 531

35 ——— *Civil Procedure Code (1882), s 25—Application to High Court after*

High Court declined to entertain an application for transfer of the same suit from the Court of the District Judge *Farid Ahmad v Dulari Bibi I L R 6 All 233* referred to MUHAMMAD SAFDAR HUSEN *v* PURAN CHAND

[I L. R., 20 All., 305

36 ——— *Civil Procedure Code (Act XIV of 1882), s 25—Transfer of suit from the Court of Small Causes at Calcutta to the*

37 ——— Application for transfer—*Transfer of several separate suits—Separate applications*—Where it is desired to have a number of suits transferred, a separate application should be made in each case for transfer KISHOREE LALL *v* LUCHMUN DOSS 2 N W, 147

2 LETTERS PATENT, HIGH COURT, CL. 13.

38 ——— Transfer to High Court—*Jurisdiction of High Court, Calcutta—Sessions Court Allahabad*—The High Court at Calcutta had no jurisdiction over the Court of the Sessions Judge at Allahabad such Court not being subject to the superintendence of the High Court under the 13th section of the Charter GREAT EASTERN HOTEL COMPANY *v* SECRETARY OF STATE FOR INDIA

[1 Ind. Jur., N S, 219

TRANSFER OF CIVIL CASE—*continued.*

2. LETTERS PATENT, HIGH COURT, CL. 13 —*continued.*

39. ———————— *Ground for transfer—Prejudice to interests of party.*—A suit will not be removed from a Zillah Court in which it was instituted, to the ordinary origi[illegible] jurisdiction of the High Court, unless it be clearly [illegible]terests of the party petitioning for such removal will be prejudiced by a non-removal. BORRADAILE *v.* GREGORY . . . Bourke, Ex. O. C., 1

40. ———————— *Power to transfer—Grounds for transfer—Inconvenience—Expense.*—The 13th section of the Letters Patent (1865) of the High Court at Fort William gives the Court power to order a suit to be transferred for trial only where the transfer is agreed on by the parties, or for the purposes of justice; and in the absence of agreement it must be made out that there will be inconvenience amounting to this, that, if the case be tried in the Court in which it was originally laid, the trial will be unsatisfactory. The mere fact that it would be less expensive to try the case in the High Court is not sufficient of itself for the Court to act upon and order the case to be transferred. OJOODERAM KHAN *v.* NOBINMONEY DOSSEE . 1 Ind. Jur., N. S., 396

41. ———————— *Ground for transfer—Nature of questions for disposal—Conduct of Judge.*—On an application under the Letters Patent, 1865, cl. 13, for the removal of a suit,—*Held* that, having regard to the whole circumstances connected with the case from the beginning, the questions to be disposed of, and the conduct of the Judge before whom the proceedings were, it was proper and necessary for the purposes of justice that the suit should be removed. THAKOOR KAPILNAUTH SAHAI DEO *v.* GOVERNMENT . 10 B. L. R., 168

42. ———————— *Ground for transfer—Nature of questions for disposal—Local prejudice.*—The Court refused to transfer a case from the mofussil, where there were, among other alleged reasons, suggestions that the plaintiff's case might be prejudiced by being tried in the mofussil, and that difficult and intricate questions of law would arise in the case, the Court not being satisfied by the evidence that such reasons existed. COURJON *v.* COURJON [9 B. L. R., 10

43. ———————— *Ground for transfer—Consent of parties—Expense.*—A suit for an account and for other relief relating to immoveable property situated without the local limits of the ordinary original civil jurisdiction of the High Court, was instituted against several defendants in the Court of the Subordinate Judge of the district within which the property was situated. Upon a petition by one of the defendants, consented to by most of the other defendants and by the plaintiff, the High Court ordered the suit to be removed from the Court in which it had been instituted, to be tried and determined by the High Court as a Court of extraordinary original jurisdiction on the grounds that the parties and the witnesses resided in Calcutta, that it would be cheaper

TRANSFER OF CIVIL CASE—*continued.*

2. LETTERS PATENT, HIGH COURT, CL. 13 —*continued.*

to try the suit in Calcutta, and that all parties appearing on the motion desired a transfer. PAYN *v.* ADMINISTRATOR GENERAL OF BENGAL [I. L. R., 6 Calc., 766: 6 C. L. R., 221

44. ———————— *Ground for transfer—Difficult questions of English law in case.*—The Court will order a suit to be removed from the mofussil, and tried in the High Court, when difficult points of English law arise, and when generally it appears to be an unfit case to be tried in the mofussil. DOUCETT *v.* WISE . 1 Ind. Jur., N. S., 94

45. ———————— *Ground for transfer—Questions of English law—Parties—British subjects and residents of Calcutta.*—Where a case was originally tried by a Zillah Judge, and on appeal to the High Court on its appellate side the Judges of that Court remanded it to the Court below for a fresh trial, intimating that it was a proper case to be transferred under cl. 13 of the Letters Patent constituting the High Court; and where it appeared that questions of English law were involved in the case, that the witnesses and parties were chiefly British subjects, and the plaintiff an officer of the High Court and resident in Calcutta, the Court ordered the case to be transferred for trial to the High Court, original jurisdiction. DOUCETT *v.* WISE [1 Ind. Jur., N. S., 227

46. ———————— *Ground for transfer—Sale in execution of decree—Order winding up company.*—On 25th October 1870 a petition for the winding up of the *B T E* Company of Assam was presented to the Court of Chancery in England by one of the shareholders of the Company, and a provisional liquidator was appointed. On 5th November, at an extraordinary meeting of the Company, it was resolved that the Company should be wound up, and liquidators were appointed. On 12th November the petition for winding up came on for hearing, and an order was made that the voluntary winding up should continue, subject to the supervision of the Court. On 18th November, by deed under the hands and seals of the liquidators, *M* was appointed their attorney in India. On 27th October certain immoveable properties in Assam belonging to the Company were attached in execution of decrees in certain suits in the Court of the Munsif of Debroghur. On 9th December the properties were put up for sale, and purchased at prices which, it was alleged, were considerably under their value. Applications were made in the Munsif's Court at Debroghur by the purchasers for confirmation of the sales, which applications were opposed by *M*, and pending the Munsif's decision, an application was made to the Deputy Commissioner of Luckimpore for an order to stay all proceedings in the decree-suits, on the ground of the order for winding up the Company of 12th November, which application was refused on 15th February 1871. On 16th February 1871 the Munsif made an order confirming the sales. *M* thereupon petitioned the High Court for the removal of the suits from Assam to the High Court, to be tried in its extraordinary

TRANSFER OF CIVIL CASE—*continued*

2. LETTERS PATENT, HIGH COURT, CL. 13—*continued*

original civil jurisdiction, on the ground that no appeal would lie against the order of 15th February refusing to stay the proceedings in the suits, and that, if an appeal should be preferred to the Deputy Commissioner from the order of the Munsif confirming the sales, his decision would be final. The application was opposed on behalf of the purchasers. *Held* the Munsif, not having had notice of the winding up order of 12th November, had power to sell the pro-

was not a proper case for the exercise of the power which the High Court possesses under cl. 13 of the Letters Patent. IN THE MATTER OF DECREE SUITS IN THE COURT OF MUNSIF OF DEBROGHUR [7 B. L. R., 305

47. — — *Law governing case.*—Where a suit was originally instituted in the Hooghly Court, and *H S*, who was a defendant, and

have the suit removed to the High Court, admitted the jurisdiction of that Court to try the suit in the exercise of its extraordinary original civil jurisdiction, and could not afterwards dispute the jurisdiction. The law, therefore, to be administered by the High Court must be the same law and equity which ought to have been applied if the suit had been tried in the Court at Hooghly. *Per* MACPHERSON, *J.*—The law

48. — *Letters Patent, High Court, 1865, cl. 13—Grounds for transfer—Practice.*—In a suit for immoveable property instituted in the Dinagepur Court the defendant applied for its transfer to the High Court under cl. 13 of the Letters Patent, the grounds upon which the transfer was asked for being that questions of difficulty arose in the suit; that the defendant's witnesses lived

one to be transferred to the High Court. HARENDRA LALL ROY *v.* SARVAMANGALA DABEE [I. L. R., 24 Calc., 183

SURVOMONGOLA DEBI *v.* HARENDRA LALL ROY [1 C. W. N., 109

49. — *Application for transfer—Before whom application should be made.*—An application to the High Court to remove a case from a District Court, and to try it as a Court of extraordinary original jurisdiction, under s. 13 of the Charter, should be made to a Judge sitting on the original side of the Court. DOUCETT *v.* WISE [4 W. R., Mis., 7

3. GROUND FOR TRANSFER

50. — **Expense, convenience, or other good reason**—*Civil Procedure Code (Act XIV of 1882), s. 23—Practice.*—S. 23 of Act XIV of 1882 is only intended to provide for those cases where, on the ground of expense or convenience, or some other good reason, the Court thinks that the place of trial ought to be changed. Parties desirous of obtaining the transfer of a case from one forum to another ought clearly to explain to the Court by petition and affidavit what is the nature of the claim and defence; they should further state what are the issues and the evidence required, and then satisfy the Court that, either on the ground of expense or convenience, or otherwise, the place of trial ought to be changed. KHATIJA BIBI *v.* TARUK CHUNDER DUTT I. L. R., 9 Calc., 980: 13 C. L. R., 182

51. — **Portion of property in another jurisdiction**—*Civil Procedure Code, 1877, s. 23—Procedure.*—The fact that a portion of property, the whole of which is sued for in the Court of the Munsif of A, is of less value than the remaining portion which is within the jurisdiction of the Munsif of B, is no sufficient ground for an application under the Code of Civil Procedure, s. 23, for a transfer to the latter Court. A party applying under s. 23, Act X of 1877 must first of all give notice to the other party or side; the application should then be received by the Munsif and transmitted to the High Court through the District Court. PURKUN JOTE *v.* DEON PANDAY 3 C. L. R., 352

52. — **Suit for partition of property partly in Calcutta and partly in mofussil.**—In a partition suit instituted in the Second Subordinate Judge's Court of the 24-Pergunnahs, the parties being residents of Calcutta, when the property sought to be partitioned consisted of (*a*) moveable property situate in Calcutta, (*b*) immoveable property, 14/15ths of which was in Calcutta, the rest being in the immediate vicinity, and when it appeared that, if tried in Alipore, an Ameen would have to partition the Calcutta property, and that the suit could be more expeditiously and cheaply tried in the High Court. *Held* that the case was a proper one to be transferred to the High Court to be tried on

TRANSFER OF CIVIL CASE—*concluded.*

3. GROUND FOR TRANSFER—*concluded.*

the original side, and an order was made accordingly. JOTENDRO NAUTH MITTER *v.* RAJ KRISTO MITTER [I. L. R., 16 Calc., 771

TRANSFER OF CRIMINAL CASE.

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1. GENERAL CASES.

1. ——— Power to transfer—*Criminal Procedure Code, 1882, s. 178—Reference to High Court—Burma Courts Act (XVII of 1875), s. 80.*—The Local Government has no power, under s. 178 of the Code of Criminal Procedure, to transfer for trial to the Court of a Commissioner a criminal case duly committed for trial to the Court of the Recorder of Rangoon; but the Local Government has the power to transfer a case from the district of Rangoon to the Sessions Division of Pegu. QUEEN-EMPRESS *v.* NGA THA MOUNG [I. L. R., 10 Calc., 643

2. ——— *Criminal Procedure Code, 1882, s. 526—District Magistrate and Civil and Sessions Judge (quâ Magistrate) of Bangalore subordinate to High Court.*—The District Magistrate and the Civil and Sessions Judge of the Civil and Military Station at Bangalore are Magistrates subordinate to the High Court at Madras within the meaning of s. 526 of the Code of Criminal Procedure. The High Court therefore has power to transfer a case from the Courts of those Judges to any other Criminal Court. Under the circumstances disclosed, the High Court transferred this case. SCOTT *v.* RICKETTS [I. L. R., 9 Mad., 356

3. ——— *Power of High Court, Bombay—Criminal Procedure Code, 1882, s. 526—Act III of 1884, s. 11—Cantonment Magistrate, Secunderabad.*—The High Court of Bombay having been vested, by notification of the Governor-General of India in Council, No. 178, of 23rd September 1874, with original and appellate criminal jurisdiction over European British subjects, being Christians, resident, amongst other places, at Secunderabad, outside the Presidency of Bombay and within the territories of His Highness the Nizam of Hyderabad, the Cantonment Magistrate of Secunderabad in his character of a District Magistrate is subordinate to the High Court in criminal matters relating to Christian European British subjects in Hyderabad within the contemplation of s. 526 of the Code of Criminal Procedure (Act X of 1882), as amended by Act III of 1884, s. 11; and the High Court possesses, by virtue of the appellate jurisdiction so vested in it, the power of transferring a criminal case pending in the Cantonment Magistrate's Court either to itself or to any Criminal Court of equal or superior jurisdiction. The High Court, by an order under s. 526 of the Criminal Procedure Code (Act X of 1882), transferred the present case of defamation from the Court of the Cantonment Magistrate at Secunderabad to the High Court for trial, on the ground that no machinery for a trial by jury existed at Secunderabad. QUEEN-EMPRESS *v.* EDWARDS [I. L. R., 9 Bom., 333

4. ——— *Power of High Court, Bombay—Aden Act II of 1864—Transfer of case from Court of Political Resident at Aden—Criminal Procedure Code, 1882, s. 526.*—A prisoner charged with having committed murder at Perim was committed by the Magistrate there on the 26th August 1885 for trial before the Political Resident at Aden, by whom he was convicted and sentenced to death on the 1 th September 1885. On the 26th January 1886 the High Court of Bombay reversed the conviction

TRANSFER OF CRIMINAL CASE
—*continued*

1 GENERAL CASES—*continued.*

and sentence, on the ground that the Court of the Resident had no jurisdiction over the Island of Perim, and that the Resident not having been appointed a Judge of a Court of Session for that island, was not competent to try the prisoner The High Court ordered a re trial before a competent Court On the 10th February 1886 the Government of Bombay issued the notification (No 823) above set forth. On the 11th March 1886 an application was made to the High Court of Bombay for the transfer of the case to another Court of Session or to the High Court for trial *Held* that Perim is a Sessions Division, and that, after the establishment, under the Code of Criminal Procedure, of a Court of Session for the Perim Sessions Division and the appointment of the Resident at Aden as Sessions Judge of that Court the accused stood properly committed to a Court of Session The High Court therefore could transfer the case from that Court under s 526 of the Code, to any other Court of equal or superior jurisdiction or to the High Court of Bombay *Per* BIRDWOOD, J —The High Court cannot, under s 526 of the Criminal Procedure Code (Act X of 1882) any more than [illegible]

8 Bom, 312, distinguished *Per* JARDINE J —After the High Court had annulled the proceedings in the Court of the Resident at Aden as without jurisdiction the case could not be treated as still pending in his Court; and as there was no Court of Session in existence at the time of the commitment it necessarily followed that the case remained in the Magistrate's Court But whether the case was con- [illegible]

5 ——————— *European British subject Jurisdiction of High Court to transfer —Grounds for transfer—Criminal Procedure Code (Act X of 1882), s 526—Act XXXVII of 1855—Sonthal Pergunnahs*—The Court of a Magistrate in the Sonthal Pergunnahs is as regards the trial of an European British subject, subordinate to the High Court and the High Court has power under s. 526 of the Criminal Procedure Code to direct the transfer of a case in which such subject is concerned The transfer of a case should be ordered when there are circumstances which may reasonably lead the petitioner to believe that the Magistrate has to some extent prejudged the case against him and will in consequence be prejudiced in the trial IN THE MATTER OF THE PETITION OF WILSON I. L. R., 18 Calc , 247

TRANSFER OF CRIMINAL CASE
—*continued.*

1. GENERAL CASES—*continued*

6 ——— Transfer to High Court—*High Courts' Criminal Procedure Act (X of 1875), s 147 (Criminal Procedure Code, 1882 s 526) and s 115—"Case" referred to High Court—Reference to Police Magistrate—Semble*—That the "case" mentioned in s 147 of the High Courts' Criminal Procedure Act (X of 1875) must refer to some question in the nature of a criminal proceeding, and not to a matter of a *quasi* civil character such as the reference to a Police Magistrate contemplated in s 115 REG v RAMADAS SAMALDAS Ex-PARTE MADAVJI DHARAMSI 12 Bom., 217

7 —— *High Courts' Criminal Procedure Act, 1875 s 147 (Criminal Procedure Code 1882, s 526) "Other proceeding"*— [illegible]

sions of that section IN THE MATTER OF THE PETITION OF CHAROO CHUNDER MULLICK CHAROO CHUNDER MULLICK v EMPRESS

I. L. R., 9 Calc., 397

8 —— *Acquittal—Presidency Magistrates Act (IV of 1877) s 181—Calcutta Municipal Act (Beng Act IV of 1876), ss 75 79*—The powers of interference given to the High Court by s 147 of the High Courts' Criminal Procedure Act were not intended to be exercised in the case of an acquittal by the Magistrate but only in the case of convictions or other orders whereby a defendant is aggrieved or injured CORPORATION OF CALCUTTA v BHEECUNHAM NAPIT *alias* BHEECUN NAPIT I. L. R., 2 Calc., 230

9 ——— *High Courts Criminal Procedure Act, 1875 s 147 (Criminal Procedure Code, 1882, s. 526)—Notice to prosecutor—Penal Code ss 292 and 294—Specific charge—Procedure on transfer to High Court*—In an application for the transfer of a case under s. 147, Act X of 1875 in which the prisoner has been convicted and is undergoing imprisonment it is in the discretion of the Court to order for sufficient *primâ facie* cause shown that the case be removed without notice to the Crown *Semble* A charge under ss 292 and 294 of the Penal Code should be made specific in regard to the representations and words alleged to have been exhibited and uttered, and to be obscene; and the Magistrate in convicting, should in his decision state distinctly what were the [illegible]

has been given the High Court when the case has been transferred under s. 147 Act X of 1875, may either try the case *de novo* or dismiss it on the ground that the Magistrate has come to no finding on which the conviction can be sustained. QUEEN v UPENDRONATH DOSS I. L. R., 1 Calc., 356

TRANSFER OF CRIMINAL CASE —*continued.*

1. GENERAL CASES—*continued.*

10. ———— —*High Courts' Criminal Procedure Act, 1875, s. 147—Transfer of case before Magistrate—Power to issue mandamus.* —A charge was made against the accused of using criminal force under s. 141 of the Penal Code. The Police Magistrate heard the evidence for the prosecution, and, without disbelieving it, decided it did not amount to the offence charged. *Held* that, assuming that an error of law had been committed, the High Court had no power to issue a mandamus to the Magistrate to commit the defendants; it was not a case where the Magistrate had declined jurisdiction; he had exercised his jurisdiction and heard the case. *Held* also it was not a case which the Court could transfer under s. 147 of the High Courts' Criminal Procedure Act. EMPRESS *v.* GASPER [I. L. R., 2 Calc., 278

11. ———— —*High Courts' Criminal Procedure Act, 1875, s. 147—Case transferred to High Court—Refund of fine on quashing conviction—Notes of evidence taken by Magistrate.* —The High Court had no power, under s. 147, Act X of 1875, to order a fine to be refunded on quashing a conviction. The Court in this instance decided whether the case should be transferred under s. 147 on the notes of the evidence taken by the Magistrate at the trial. QUEEN *v.* JEEBUN BUX [I. L. R., 1 Calc., 354

12. ———— *High Courts' Criminal Procedure Act, 1875, s. 147—Costs—Police Magistrates—Notes of evidence.*—In a case transferred to the High Court under s. 147, Act X of 1875, the Court had no power to give costs. *Semble* —The case may be transferred after final determination by the Magistrate. Notes of the proceedings before them should be taken in all cases by the judicial officers of all Criminal Courts subject to the Act. IN THE MATTER OF LOUIS. IN THE MATTER OF BENGAL ACT VI OF 1866 [15 B. L. R., Ap., 14

13. ———— Power of District Magistrate—*Power to call for case—Procedure when, having called for it, he finds it out of his jurisdiction.* The Magistrate of the district has authority to call up to his own Court any criminal case without limitation as to the stage of proceeding at which it may be called. If the Magistrate, having in the exercise of his authority withdrawn any case, finds that it did not come within the jurisdiction of his Magistracy, he would not merely be competent, but bound to refuse to proceed further with the case. VILAETEE KHANUM *v.* MEHER ALI [24 W. R., Cr., 4

14. ———— *Held* that, although the Magistrate of a district is competent to order the removal of any particular case from the file of a subordinate Court to his own, it is doubtful whether he can by general proceeding direct the transfer of cases which have no existence, and which are not pending before any of his subordinates. GOVERNMENT *v.* GIRDHAREE LALL [1 Agra, Cr., 24

15. ———— *Criminal Procedure Code (1882), ss. 526 and 192—Transfer of criminal case by the High Court to the Court of a District Magistrate—Interpretation of order—Practice.*—When a criminal case is transferred by an order of the High Court from a Court subordinate to a District Magistrate to the Court of a District Magistrate, if it is intended that the District Magistrate shall have power to transfer the case to a subordinate Court, that intention will be expressed in the order of the High Court. If no such intention is expressed, it will be understood that, in the case of a transfer from a Court subordinate to a District Magistrate to a District Magistrate's Court, that District Magistrate's Court is expected to try the case itself; but, when the transfer is from the Court of one District Magistrate to the Court of another District Magistrate, it will be understood that, unless the contrary is directly expressed, the Magistrate of the Court to which the transfer is made has power and jurisdiction to apply s. 192 of the Code of Criminal Procedure, and to transfer the case to the Court of any Magistrate subordinate to him who may be competent to try it. QUEEN-EMPRESS *v.* MATA PRASAD [I. L. R., 19 All., 249

16. ———— Application for transfer—*Criminal Procedure Code, 1872, s. 64—Power of Judge acting on English committee.*—An application for the transfer of a case under s. 64 of the Criminal Procedure Code should be made, not by letter to the English Department of the High Court, but before the Court in its judicial capacity, and should be supported by affidavits or affirmation in the usual way. QUEEN *v.* ZUHIRUDDIN [I. L. R., 1 Calc., 219: 25 W. R., Cr., 27

17. ———— Notice of transfer—*Subordinate Magistrates—Criminal Procedure Code (Act X of 1872), s. 48—Notice to the parties before the transfer is made.*—Before a Magistrate of a district can transfer a case from a Court subordinate to him to any other subordinate Court, notice of such intended transfer should be served upon the parties, so as to enable any or either of the parties to come forward and show cause why such transfer should not be made. IN THE MATTER OF THE PETITION OF TEACOTTA SHEKDAR. TEAKOTTA SHEKDAR *v.* AMEER MAJEE I. L. R., 8 Calc., 393: 10 C. L. R., 239

18. ———— *Criminal Procedure Code (Act X of 1882), s. 528—Notice to accused.*—An order under s. 528 of the Criminal Procedure Code (Act X of 1882), transferring a case for inquiry or trial from one Magistrate to another, ought not to be made without notice to the accused. QUEEN-EMPRESS *v.* SADASHIV NARAYAN JOSHI [I. L. R., 22 Bom., 549

19. ———— Transfer of partly-heard case—*Hearing of evidence.*—Where a case which

TRANSFER OF CRIMINAL CASE —*continued*

1. GENERAL CASES—*concluded*.

QUEEN *v* KULLIAN SINGH . 2 N. W., 468

The High Court, however, declined to interfere in a case of this sort, as the prisoners did not appeal or raise any objection to the trial on this ground KOPIL NATH SAHI *v* KONEERAM

[14 W. R., Cr., 3

2 LETTERS PATENT, HIGH COURT, CL. 29.

20 ———— Transfer to High Court— *Power to transfer—Criminal Procedure Code, 1872, s 64*—S 29 of the Letters Patent of 1865 empowers the High Court to transfer for trial before itself an appeal to a Court of Session from the sentence of a District Magistrate, and this power was not affected by s 64 of the Code of Criminal Procedure, 1872, which authorized the High Court to transfer an appeal from one subordinate Court of criminal jurisdiction to another SITAPATHI NAYUDU *v*. QUEEN . I. L. R., 6 Mad., 32

21. ———— *Power to transfer—"Competency" to investigate case*—The construction of cl 29 of the Letters Patent, 1865 is that the High Court has power, if in its discretion

competency as regards local jurisdiction, but only competency with regard to the offender, the nature of the offence, and the punishment QUEEN *v* NABADWIP GOSWAMI

[1 B. L. R., O. Cr., 15: 15 W. R., Cr., 71 note

22. ———— *Power to transfer—Power of single Judge on original side of High Court*—On an application made for the transfer of a case from the Sessions Court at Patna for trial by the High Court at Calcutta, on the grounds mainly that all but one of the charges against the prisoners were for offences committed in Calcutta; that the selection of Patna as the place of trial was calculated to prejudice the prisoners; that the police at Patna were getting up the case against the prisoners by improper and illegal means; that by these means was created such a feeling of dread and

these allegations were denied by the affidavits filed in opposition to the application,—*Held* (MACPHERSON, J, doubting) the High Court had power under

TRANSFER OF CRIMINAL CASE —*continued*.

2 LETTERS PATENT, HIGH COURT, CL 29 —*concluded*

cl 29 of the Letters Patent to transfer the case for trial by itself The Court, however, refused the application, on the ground that a sufficient case had not been made out for the exercise of the power of the Court. *Per* PHEAR, J—A single Judge, sitting on the original side of the Court, has power to entertain an application for the removal of a

3 GROUND FOR TRANSFER.

23. ———— Nature of grounds for transfer—*Transfer from one Magistrate to another*.—The High Court will not, except on very strong and very clear grounds, transfer a case from one Magistrate's Court to that of another Magistrate IN THE MATTER OF THE PETITION OF SHANKAR ABAJI HOSHING REG *v* SHANKAR ABAJI HOSHING . . . . 6 Bom., Cr., 69

24. ———— Probability of unfair trial —*Transfer from one Magistrate to another*—It is only when there is reason to suppose that the prisoner will not have a fair trial that the High Court will transfer a case from one magisterial officer to another. QUEEN *v* KISTO CHUNDER GHOSE

[2 W. R., Cr., 58

25. ———— *Proof of grounds for transfer—Grounds necessary to obtain transfer when application is opposed by accused*—Before the transfer of a case from one Criminal Court to another can be made, in cases in which the accused objects to the transfer, the prosecution must bring forward the very best evidence to prove that a fair

26 ———— Prosecution initiated by Magistrate—*Conviction before same Magistrate—Transfer of appeal from Magistrate to Sessions Judge*—Where the Magistrate of the district had procured the initiation of a number of prosecutions

DURRO KOMILLA 24 W. R., Cr., 55

27. ———— Judge forming premature opinion—*Convenience—Relieving judicial officer of case he wishes not to try*—The High Court does not exercise its powers of transfer in a case of forgery or perjury solely on the ground that the Judge who is to try the case has formed an opinion that the document has been forged or the perjury committed. But when the transfer can be made

TRANSFER OF CRIMINAL CASE —*continued.*

3. GROUND FOR TRANSFER—*continued.*

without risk of any improper interference with the course of justice, and without much inconvenience to the parties and witnesses, the transfer would be proper, not only as a fair concession to the accused person, but as a means of relieving the Judge from a position which he would himself desire to avoid. IN THE MATTER OF THE PETITION OF ARUNÁCHALLA REDDI . . . . . 5 Mad., 212

28. ——— *Criminal Procedure Code (Act V of 1898), s. 526 – Expression of opinion by Magistrate in counter-case on evidence adduced.*– Where the complaint forming the subject of trial in a case before a Magistrate related to facts forming the substance of the defence in another case already tried by the same Magistrate,—*Held* that the Magistrate having had to express his opinion on the evidence, which formed the evidence for the defence in that case, it was desirable to have the complaint tried by some other Magistrate. CHANDRAMANI SARMA *v.* KUNJA REHEI . 4 C. W. N., 824

29. ——— Reasonable apprehension in the mind of the accused—*Criminal Procedure Code (1882), s. 526 – Real bias—Incidents calculated to create apprehension of bias.*—In dealing with applications for transfer what the Court has to consider is not merely the question whether there has been any real bias in the mind of the presiding Judge against the accused, but also the further question whether incidents may not have happened which, though they may be susceptible of explanation and may have happened without there being any real bias in the mind of the Judge, are nevertheless such as are calculated to create in the mind of the accused a reasonable apprehension that he may not have a fair and impartial trial. DUPEYRON *v.* DRIVER . I. L. R., 23 Calc., 495

FARZAND ALI *v.* HANUMAN PRASAD [I. L. R., 19 All., 64

30. ——— Probability of unfair trial—*Complexity of case—Transfer from one Magistrate to another—Local investigation—Magistrate trying case, Competency of, to be witness—Competent witness—Examination of Magistrate trying case as a witness.*—Where an Assistant Magistrate with second class powers was directed by the District Magistrate to take up a case of some complexity, arising out of disputed boundaries to land, in which the accused were charged with rioting, trespass, mischief, and theft, and where, in the course of such investigation, he held a local inquiry extending over five days, during which he made a number of notes and appeared to have made a very careful and conscientious investigation of the locality, such as would properly be made by a person whose duty it was to get at the facts with a view to lay the same before some tribunal, and during such investigation it appeared that he acquired a large amount of information with reference to the occurrence on which he had to arrive at a judicial determination, but which, by reason of the way it was acquired, he could not properly or legally consider in arriving at an ultimate decision of the case (such information not being guarded by the safeguards by which statements on which a Judge or a Magistrate exercising judicial functions can act must be guarded), and where it was suggested that the notes so made should be put on the record, and the Assistant Magistrate tender himself while trying the case as a witness to be cross-examined by either the prosecution or the defence,—*Held* that such a course could not be allowed, and that the Assistant Magistrate ought not to try the case, but that it must be transferred to some other Magistrate exercising first class powers for disposal. HARI KISHORE MITRA *v.* ABDUL BAKI MIAH . . . I. L. R., 21 Calc., 920

31. ——— Fairness and impartiality of the jury—*Criminal Procedure Code (1882), s. 526, cl. (e)—Expression of belief by the District Magistrate.*—When two such officers, as the District Magistrate and the Sessions Judge, emphatically express their belief that it will be next to impossible to obtain a fair and impartial trial if the case be heard before a jury chosen from a particular district, the bare expression of such belief, quite apart from the foundations thereof, must shake the confidence of the parties interested and of the public in the fairness and impartiality of the particular jury to try the case. An order for transfer in such cases is expedient for the ends of justice under s. 526, cl. (*e*), of the Criminal Procedure Code. The importance of securing the confidence of parties in the fairness and impartiality of the tribunal is next only to the importance of securing a fair and impartial tribunal. *Dupeyron v. Driver, I. L. R., 23 Calc., 495,* followed. The jury in a case triable by jury constitute a part and an important part of the tribunal. It is not quite reasonable to say, where doubt is entertained as to the fairness and impartiality of the jury, that the trial should nevertheless go on before such a jury, because an erroneous verdict may, in the end, be set right by the High Court. *Empress v. Nobo Gopal Bose, I. L. R., 6 Calc., 491,* distinguished. LEGAL REMEMBRANCER *v.* BHAIRAB CHANDRA CHUCKERBUTTY [I. L. R., 25 Calc., 727

IN THE MATTER OF THE PETITION OF THE DEPUTY LEGAL REMEMBRANCER. QUEEN-EMPRESS *v.* BHAIRAB CHUNDER CHAKURBUTTY . 2 C. W. N., 65

32. ——— Magistrate having bias against the accused—*Criminal Procedure Code (1882), s. 526A.*—Where a Magistrate, in the course of an investigation under Ch. XIV of the Criminal Procedure Code, and also in the subsequent enquiry preliminary to commitment, acted in a manner indicating some bias against the accused,—*Held* the Magistrate should not proceed with the enquiry, and the case should be transferred from his file. RATNESSARI PERSHAD NARAYAN SINGH *v.* EMPRESS [2 C. W. N., 498

33. ——— Illegal procedure by Magistrate—*Magistrate antagonistic to accused*

TRANSFER OF CRIMINAL CASE —*continued.*

3. GROUND FOR TRANSFER—*continued.*

—*Power of High Court.*—Where the procedure in the case of a person charged with an offence was found to be irregular and illegal, and the Magistrate was prejudiced and antagonistic to the prisoner, the High Court made an order (as in the *Bancoorah case, 4 B. L. R., Ap., 1*), to transfer the proceedings to be tried by another officer appointed or deputed by the Government of Bengal to try the case. ABDOOL KADIR KHAN *v.* MAGISTRATE OF PURNEAH

[11 B. L. R., Ap., 8: 20 W. R., Cr., 23

34. ——— Judicial officers interested in case—*Criminal Procedure Code, 1872, s. 64—Road cess case—Transfer of appeal for trial.*—Where it appeared that the only officers in the district of P otherwise competent to hear an appeal from a conviction for theft of property alleged to have belonged to the Road Cess Committee of the district were, by reason of their connection with

gunnahs, to be dealt with as an appeal presented in his own Court. IN THE MATTER OF DWARKA NATH BANERJEE . . . 6 C. L. R., 279

35. ——— Magistrate expressing opinion unfavourable to accused—*Criminal Procedure Code, 1861, s. 36—Transfer by Magistrate.*—Although s. 36 of the Code of Criminal Procedure did not require a Magistrate to state his reasons for

prosecution, and had expressed an opinion unfavourable to the prosecution. QUEEN *v.* NOBOCOOMAR BANERJEE . . . . 14 W. R., Cr., 12

36. ——— Manipulation of order-sheet by Magistrate—*Criminal Procedure Code (Act X of 1882), s. 526—Inquiry preliminary to commitment—Bias—Attaching document to record after receipt of order of High Court, staying proceeding—Transfer, Grounds of.*—It appeared that during the course of an inquiry preliminary to commitment some entries in the order-sheet were not made by the Magistrate, as required by the rules of

officer. *Held* that the Magistrate had acted with impropriety and showed some bias against the accused that further proceedings should not therefore be taken before the said Magistrate and the case should be transferred to another Magistrate. ANANT RAM *v.* MANSOOR ROY . . . 2 C. W. N., 639

37. ——— Jurisdiction—*Place of commission of offence—Transfer of preliminary investigation—Criminal Procedure Code, 1872, ss. 64 and 69.*—The High Court under ss. 64 and 69 of the Code of Criminal Procedure, directed the preliminary investigation in this case, in which the accused was charged with criminal breach of trust, to be held in Calcutta, the place where the offence charged was, if not wholly, at all events partly, committed. QUEEN *v.* MACDONALD . . . 22 W. R., Cr., 6

38. ——— View of the scene of the occurrence by a Magistrate trying a criminal case—*Local investigation—Criminal Procedure Code, s. 526.*—It is not only not objectionable, but in many cases highly advisable, that a Magistrate trying a criminal case should himself inspect the scene of the occurrence in order to understand fully the bearing of the evidence given in Court. But if he does so he should be careful not to allow any one on either side to say anything to him which might prejudice his mind one way or the other. The fact he has held such a local investigation does not amount to a ground for transferring the case to another Magistrate. IN THE MATTER OF THE PETITION OF LALJI . . . . I. L. R., 10 All., 302

TRANSFER OF PROPERTY.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER

[I. L. R., 2 Bom., 547
I. L. R., 5 Bom., 554

——— while transferor is out of possession.

See VENDOR AND PURCHASER—BILLS OF SALE . . . 2 B. L. R., P. C., 111

1. ——— Ownership of cotton in press—*Sale—Exchange—Trade usage. Proof of—Contract Act, ss. 49, 77, 92, 151—Transfer of Property Act, s. 118—Delivery of cotton to cotton press.*—According to mercantile usage in the cotton trade in Tuticorin, where a dealer delivers cotton to the owner of a cotton press, not in pursuance of any special contract, the property in the cotton vests in the owner of the cotton press who is bound to give the merchant in exchange cotton of like quantity and quality. The transaction is not a sale, but an agreement for exchange. Where therefore cotton thus delivered was accidentally destroyed by fire,—*Held* that the loss fell on the owner of the press. VOLKART BROTHERS *v.* VETTIVELU NADAN

[I. L. R., 11 Mad., 459

2. ——— Erection of building for school on land—*Gift of building for a school—Position of managers of school—Suit by managers for trover and trespass.*—Where a party who, partly with his own funds and partly with R100 subscribed

by the village, erected a building for a school, never gave the property to the school, and never even acquiesced in the managers of the school entering upon it,—*Held* that the managers entered upon it as trespassers, and that, although the proprietor acquiesced in their having taken possession, he did not thereby convey any property in the school to the subscribers, and was not bound to repay that portion of the money which he expended himself in building the house, or to do more than return that portion of the funds which were subscribed by the village. SREEHURRY ROY v. HILLS . . . . . 7 W. R., 476

S. C. on reference on original trial [6 W. R., Civ. Ref., 21

3. ——— **Sale while vendor is out of possession**—*Right of purchaser to sue for possession.*—It is the practice of the Courts in this country to give effect to sales of property made by persons out of possession, and to recognize the title of the purchaser to maintain a suit. RUNNOO PANDEY v. BUKSH ALI . . . . . 3 N. W., 2

KUMUROODDEEN v. BHADOO . 11 W. R., 134

AULOCK MONEE DOSSIA v. AULOCK MONEE DEBIA . [25 W. R., 48

PRANKRISHNA DEY v. BISWAMBHAR SEIN [2 B. L. R., A. C., 207 11 W. R., 81

4. ——— *Right of purchaser to sue for possession—Want of consideration.*—Alleged purchasers whose vendors were not in possession, and who have paid nothing for what is said to have been sold to them, are not competent to maintain a suit for possession of the property in dispute. BISHONATH DEY ROY v. CHUNDER MOHUN DUTT BISWAS . . . . 23 W. R., 165

See TARA SOONDOREE CHOWDHRAIN v. COLLECTOR OF MYMENSINGH [13 B. L. R., 495 : 20 W. R., 446

5. ——— *Right of purchaser to sue for possession.*—The current of High Court decisions on the question whether a purchaser from a party not in possession is competent to maintain a suit to recover the land is in favour of the right to bring a suit. BISSESSUR DOSS v. JOYKISHORE DOSS . . . . 25 W. R., 223

6. ——— *Wrongful dispossession of vendor—Right of vendee to sue for possession.*—Where a conveyance of property was made by a person who had been in possession and enjoyment for years before she was wrongfully ousted, the conveyance was held to give a right to sue for immediate possession. BIKAN SINGH v. PARBUTTY KOOER [22 W. R., 99

NITTYANUND GOSSAIN v. SHAMA CHURN CHATTERJEE . . . . 23 W. R., 163

See GUNGA HURRY NUNDEE v. RAGHUBRAM NUNDEE . 14 B. L. R., 307 : 23 W. R., 131

7. ——— *Right of assignee to sue for possession—Third parties—Requisite proof.*—An assignee of property, of which the assignor was not in possession when the assignment was made, can only recover, even from the hands of third persons, upon showing that he would have a right to enforce specific performance of his contract against his assignor if the property were come back to the hands of the assignor. BOODHUN SINGH v. LUTEEFUN . . . . 22 W. R., 535

8. ——— *Right of specific performance after purchase of right to sue.*—Where a purchaser of a right to sue for possession brings a suit for specific performance and it is not shown that he has left undone anything necessary to entitle him to what he claims, it must be taken in special appeal that the plaintiff is entitled to insist on specific performance of his contract with his vendor. LALLA SABIL CHAND v. GOODUR KHAN [22 W. R., 187

9. ——— *Suit by assignee for possession—Effect of bill of sale.*—The assignees, *R*, *K*, and *G*, of certain property brought against the assignor, *L* and others, a suit to obtain possession of a portion of assigned property of which he, *L*, never had possession, and to obtain a declaration of right of ownership to the other portion already in the possession of one or more of themselves. *Held* that as *L*, at the time when the assignments were made, was not in either actual or constructive possession, he was unable thereby to pass the property, and that the bill of sale was only evidence of a contract to be performed in future upon the happening of a contingency. RAM KHELAWUN SINGH v. OUDH KOOER . . . . . 21 W. R., 101

And *see* BOODHUN v. BOODHUN SINGH [21 W. R., 156

10. ——— *Suit by assignee for possession—Validity of transfer.*—The plaintiffs sought to recover possession from the defendants of certain land, claiming under a kararnama executed to them by one Mutyawa. The defendants contended that Mutyawa had never been in possession of the land. The lower Appellate Court held that, as Mutyawa was not in possession at the time when the kararnama was executed, the plaintiff's claim was not maintainable. On appeal to the High Court,—*Held*, reversing the decree of the lower Appellate Court, that the circumstance of Mutyawa's not having been in possession at the time the kararnama was executed did not prevent the plaintiffs from recovering possession from the defendants. *Kalidas v. Kanhaya Lall, I. L. R., 11 Calc., 121 : L. R., 11 I. A., 219,* referred to and followed. UGARCHAND MANACKCHAND v. MADAPA SOMANA [I. L. R., 9 Bom., 324

11. ——— *Sale in execution of decree—Assignment by purchaser who has not obtained possession.*—Upon a sale in execution of a decree the property in the thing sold passes to the purchaser; and there is nothing in either the Hindu or the English law which debars a third person from taking an assignment of such property from the auction-purchaser, albeit it has not been reduced into possession by him. GOVIND RAGUNATH v. GIVIND JAGOJI . . I. L. R., 1 Bom., 500

TRANSFER OF PROPERTY—*concluded*

12. ——— Hypothecation of property without possession—*Incomplete title*—*Held* that the hypothecation of property to which a judgment debtor had not acquired absolute title was incomplete and insufficient to create a valid and perfect lien in favour of the mortgagee enforceable by law against the actual possessor HERCHUND SINGH *v* RAM SINGH . 1 Agra, 286

13. ——— Lease granted while lessor is out of possession.—A valid lease cannot be granted by a person not in possession of the lands leased LIERI *v* KRISTO MOHUN BOSE HOVEY-DEN *v* AKBAR ALI . L. R, 1 I. A., 76

14 ——— *Rights of lessee*—*Suit for possession*—A transfer of property of which the transferor is not at the time of the transfer in possession is not *ipso facto* void Where a

performance of the agreement by the patnidar. LOKENATH GHOSE *v*. JUGOBUNDHOO ROY [I. L. R, 1 Calc., 297

TRANSFER OF PROPERTY ACT (IV OF 1882)

See LEASE—CONSTRUCTION [I. L. R, 7 Bom., 256
I. L. R, 17 Calc, 826

See LIMITATION ACT, 1877, ART 132. [I. L. R, 10 Mad, 509
I. L. R., 14 Calc., 730

See LIMITATION ACT, 1877, ART 135 [I. L. R., 16 Calc., 693
L. R., 16 I. A., 85

See MORTGAGE—FORECLOSURE—DEMAND AND NOTICE OF FORECLOSURE [I. L. R, 6 All., 386
I. L. R, 1 Calc, 582

——— Application of Act—*Mortgages executed before Act came into force*—"*Property,*" *Meaning of*—*General Clauses Act (I of 1868), s 2 cls 5, 6*—*Held* by EDGE, C.J, STRAIGHT, TYRRELL, and KNOX, JJ—The term "property" as used in Ch IV of Act IV of 1882, means an actual physical object, and does not include mere rights relating to physical objects *Held* by the Full Bench. The Transfer of Property Act (IV of 1882), so far as the question of reliefs and procedure is concerned, applies to mortgages executed before the coming into force of the Act. *Ganga Sahai* v. *Kishen Sahai, I. L. R, 6 All, 262*, and *Bhobo Sundari Debi* v. *Rakhal Chunder Bose, I. L. R., 12 Calc., 583*, referred to *Per* MAHMOOD, *J., contra*—The term

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

"property" throughout Act IV of 1882 is used in its most generic sense, and will include the right known as an "equity of redemption" MATA DIN KASODHAN *v* KAZIM HUSAIN [I. L. R, 13 All., 432

1. ——— s. 2—*Mortgage executed before Act came into force*—*Assignment of after Act in operation*—The provisions of the Transfer of Property Act apply to the assignment of a mortgage made after that Act came into force, although the mortgage may have been made before the commencement of that Act LALA JUDDEO SUHAI *v* BIRJ BEHARI LAL . I. L. R., 12 Calc., 505

2. ——— *Mortgage*—*Foreclosure*—*Reg XVII of 1806, s 8*—*Provision as to the year of grace*—*Extension of time by mutual agreement*—The years of grace allowed by s 8, Regulation XVII of 1806, is a matter of procedure which it was open to the parties to extend by mutual agreement without prejudice to the proceedings already had under the section, and upon the expiration of such extended period the mortgagee acquired an immediate right to have a decree declaring the property to be his absolutely The right so acquired by the mortgagee while the Regulation was in force is a right which falls within the meaning of cl (c) s. 2 of the Transfer of Property Act Proceedings under s. 8 had come to a close by the expiration of the stipulated period of extension while the Regulation

3. ——— *Mortgage*—*Foreclosure*—*Suit for conditional sale*—*Reg XVII of 1806*—*Procedure*—A suit was brought on the 24th January 1885 by a mortgagee upon a mortgage by conditional sale asking for a declaration that the mortgagor's right to redeem had been extinguished, and that *he was entitled to possession of the mortgaged properties* The mortgage was dated the 6th April 1881, and the mortgage money was repayable on the 13th May 1881. On the 9th July 1881 the mortgagee caused a notice to be served on the mortgagor in compliance with the provisions of ss 7 and 8 of Regulation XVII of 1806. The year of grace expired on the 10th July 1882 It was contended by the mortgagor that, as the Transfer of Property Act came into force on the 1st July 1882, the proceedings taken by the mortgagee should be regulated by the procedure laid down in ss 86 and 87 of that Act and not by the procedure prescribed by Regulation XVII of 1806 *Held* that the procedure laid down by the Transfer of Property Act could not be applied to the case Although the year of grace had not expired when that Act came into force, and the full and complete right of the mortgagee had not accrued, he had acquired the right to bring a suit under the provisions of Regulation XVII of 1806 at the expiration of the year of grace, and the mortgagor was under a liability to

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

part with his property upon a suit being brought at the expiration of that year, and such right and liability came within the meaning of the these terms as used in cl. (*c*), s. 2 of the Transfer of Property Act. MOHABIR PERSHAD NARAIN SINGH *v.* GUNGADHUR PERSHAD NARAIN SINGH

[I. L. R., 14 Calc., 599

4. ———— *Mortgage—Suit for foreclosure—Conditional sale—Reg. XVII of 1806—General Clauses Consolidation Act (I of 1868), s. 6—"Proceedings."*—In a suit for foreclosure under a deed of conditional sale, where the due date of the deed expired and notice of foreclosure was served while Regulation XVII of 1806 was in force, but before the expiration of the year of grace that Regulation had been repealed by the Transfer of Property Act,—*Held*, following *Mohabir Pershad Narain Singh* v. *Gungadhur Pershad Narain Singh, I. L. R., 14 Calc., 599*, that proceedings for foreclosure having been commenced under the Regulation, those proceedings were saved by s. 6 of the General Clauses Consolidation Act (I of 1868). The "proceedings" referred to in that section are not necessarily judicial proceedings only, but ministerial proceedings, as, in the present case, the service of notice of foreclosure. UMESH CHUNDER DAS *v.* CHUNCHUN OJHA . I. L. R., 15 Calc., 357

5. ———— and ss. 67, 86—*Suit for foreclosure of mortgage—Beng. Reg. XVII of 1806, ss. 7, 8—Procedure—Act I of 1868 (General Clauses Act), s. 6.*—A mortgagee by conditional sale under an instrument executed while Regulation XVII of 1806 was in force, and before the Transfer of Property Act, 1882, which repealed that Regulation, came into force, sued, after the repeal of that Regulation, for foreclosure of the mortgage, not having proceeded in accordance with the provisions of s. 8 of that Regulation. *Held* (STUART, C.J., dissenting) that the procedure of that section was not saved by cl. (*c*) of s. 2 of the Transfer of Property Act, but the provisions of that Act were applicable to the suit. GANGA SAHAI *v.* KISHEN SAHAI

[I. L. R., 6 All., 262

6. ———— and ss. 67 and 99—*Attachment of property mortgaged prior to 1882.*—In 1884 a mortgagee obtained a decree for arrears of interest due under a mortgage-deed of 1879, and in execution of the decree attached and applied for the sale of the land mortgaged. *Held* that by reason of s. 99 of the Transfer of Property Act, 1882, the land could not be sold otherwise than by a suit instituted under s. 67 of the said Act. KAVERI *v.* ANANTHAYYA . I. L. R., 10 Mad., 129

7. ———— and ss. 67, 99—*Mortgage-decree—Execution of decree.*—A decree-holder, who had obtained a decree in the year 1880 against his judgment-debtor, declaring his title in certain mortgaged properties and authorizing a sale, sought, after several previous applications keeping the decree alive, to execute his decree again on the 15th April 1885. The judgment-debtor objected, on the ground that no suit had been instituted or decree obtained under s. 67 of the Transfer of Property Act as directed by s. 99. *Held* that s. 99 of that Act was not intended to apply to decrees already obtained declaring a lien and authorizing a sale, but even assuming that it was so intended, s. 2 of the Act saved the right of the decree-holder to obtain a sale of the mortgaged properties. *Ganga Sahai* v. *Kishen Sahai, I. L. R., 6 All., 262*, distinguished. DINENDRA NATH SANNYAL *v.* CHANDRA KISHORE MUNSHI . . . I. L. R., 12 Calc., 436

8. ———— and s. 86—*Mortgage—Conditional sale—Suit for possession on foreclosure—Beng. Reg. XVII of 1806, ss. 7, 8.*—The procedure laid down in the Transfer of Property Act may be applied to the case of foreclosure of a mortgage executed before the Act came into operation, provided it be so applied as not to affect the rights saved by s. 2, cl. (*c*), of the Act. Where, therefore, under the provisions of Regulation XVII of 1806, notice of foreclosure had been served on a mortgagor by conditional sale, the mortgage having been executed and the foreclosure proceedings taken before the Transfer of Property Act came into force, and after the expiry of the year of grace, the money not having been paid, the mortgagee instituted a suit for possession on foreclosure, and when such suit was defended by a third party who had purchased the mortgaged property at an execution-sale and obtained possession before the commencement of the foreclosure proceedings, and the necessary notice had not been served upon him,—*Held* that it was competent to the Court to apply the procedure prescribed by the Transfer of Property Act and grant the mortgagee a decree in the terms of s. 86, substituting the period of "one year" for the period of "six months" therein mentioned. *Ganga Sahai* v. *Kishen Sahai, I. L. R., 6 All., 622*, referred to. PERGASH KOER *v.* MAHABIR PERSHAD NARAIN SINGH . . . I. L. R., 11 Calc., 582

9. ———— *Mortgage—Foreclosure, Suit for—Mortgage by conditional sale—Beng. Reg. XVII of 1806—Procedure—Statute, Construction of.*—Where a suit is brought, after the date of the Transfer of Property Act, for the foreclosure of a mortgage dated previous to the Act, the procedure to be followed is that given by the Transfer of Property Act; the procedure of Regulation XVII, 1806, not being saved by s. 2, cl. (*c*), of Act IV of 1882. *Ganga Sahai* v. *Kishen Sahai, I. L. R., 6 All., 262*, approved. *Per* WILSON, *J.*—It is a general rule in construing statutes that in matters of substantive right they are not to be so read as to take away vested rights, but that in matters of procedure they are general in their operation. There is nothing in the Transfer of Property Act from which it can be beyond reasonable doubt concluded that the Legislature intended to depart from this settled principle of legislation. *Per* TREVELYAN, *J.*—There is a clear distinction between "relief" and the mode or procedure for obtaining such relief. The "relief" remains unaffected by a change of procedure. The "rights and liabilities" of a mortgagor and mortgagee, and the "relief" in respect of such rights and liabilities, are

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

the same under Act IV of 1882 as they were before. A different procedure for enforcing such rights and obtaining such relief has however, been adopted by the Transfer of Property Act BHOBO SUNDARI DEBI *v* RAKAL CHUNDER BOSE

[I L R, 12 Calc, 583

——— s 3

See PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING

[I. L R., 21 Calc, 116

See REGISTRATION ACT, 1877, s 50

[I. L. R., 16 All., 478

——— ——— *Meaning of "notice"*—The definition of the word "notice" in s 3 of the Transfer of Property Act (IV of 1882) correctly codifies the law as to notice which existed prior to the passing of the Act CHURAMAN *v* BALLI

[I L R., 9 All., 591

——— s 4

See REGISTRATION ACT, 1877 s 17, cl (d) . I L R., 17 Mad., 276

——— s 6

See ONUS OF PROOF—HINDU LAW—ALIENATION I L. R., 17 All., 125

See RIGHT OF SUIT—MESNE PROFITS

[2 C. W N, 43

1 ——— *Property—Actionable claim—Transferable claim—Civil Procedure Code, s 266—Execution of decree—Attachment* —Under the Transfer of Property Act, "property" includes an actionable claim LUDRA PERKASH MISSER *v* KRISHNA MOHUN GHATUCK

[I. L. R., 14 Calc, 241

2 ——— *Reversionary right—Assignment of the interest of a Hindu reversioner* [illegible]

[illegible] such interest is [illegible] by law BRAHMADEO NARAYAN *v* HARJAN SINGH

[I L R, 25 Calc, 778

3 ——— *Mesne profits, right to recover, Transferability of—Actionable claim—Transfer of Property Act, s 130*—A right to recover mesne profits which are in the nature of damages is not transferable. DURGA CHUNDRA ROY *v* KOILASH CHUNDER ROY . 2 C. W N, 43

——— s 7

See MINOR—LIABILITY OF MINOR ON, AND RIGHT TO ENFORCE, CONTRACTS

[I. L. R., 23 Bom., 146

——— s 8

See REGISTRATION ACT s 18

[I. L. R., 18 Mad., 464

See VENDOR AND PURCHASER — PURCHASERS, RIGHTS OF

[I. L. R., 22 Bom., 610

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

1.——— s 10—*Married Woman's Property Act (III of 1874), s 8—Restraint on anticipation.*—S 10 of the Transfer of Property Act merely excepts from the general rule laid down in s 8 of the Married Woman's Property Act, III of 1874 the particular case of a married woman, and does not give to a restraint upon anticipation any greater force than it had before the passing of the Act, but merely preserves to it the effect it had previously, leaving the Married Woman's Property Act of 1874 and the decisions upon it untouched. HIPPOLITE *v* STUART I L. R, 12 Calc., 522

2 ——— and s 2—*Condition against alienation—Inheritance—Deed of compromise—Bengal Civil Courts Act, VI of 1871, s 24* —In a suit for possession of certain shares in certain villages a compromise was effected between the plaintiffs and B, the defendant The terms of the compromise were embodied in a deed the terms of which were (*inter alia*) as follows 'The said *B* will hold possession as a proprietor generation by generation, without the power of transferring in any shape The following shares recorded in *B*'s name shall not be transferred or sold in auction in payment of any debt payable by the said *B* and in the event of their being transferred or sold, such transfer will be invalid, and the plaintiffs will then be entitled to set aside that transfer and to obtain possession" *B* obtained possession of the shares allotted to him by the compromise Subsequently certain creditors of *B* attached the shares referred to in the deed in execution of a decree obtained against the heirs of *B* for money lent to *B* on a bond which he had executed while in possession of the shares and in which he made a simple mortgage of them The representatives of the plaintiffs in the suit in which the compromise was made objected to the attachment *Held* by OLDFIELD J, that the deed of compromise passed an absolute estate to *B* and his heirs to which the law annexed a power of transfer and that in reference to s 10 of the Transfer of Property Act, the stipulation against alienation on *B*'s part or against sale by auction in execution of decrees against him was void. *Per* MAHMOOD, J That the rule contained in s 10 of the Transfer of Property Act was not binding upon the Court in this case, inasmuch as the question was one of succession or inheritance, to be governed by s 24 of the Bengal Civil Courts Act; that it was for those objecting to the attachment to show that under the Hindu law the rights of *B* in the property ceased to exist at his death or that his estate devolved upon them free of his debts; that the Hindu law being silent on this subject, the principles of justice, equity and good conscience must be applied, to which so far as transfer was concerned, effect was given by s. 10 of the Transfer of Property Act, that the restriction imposed by the deed of compromise upon *B*'s powers of alienating the absolute estate which it [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

B. L. R., 377, referred to. BHAIRO *v.* PARMESHRI DAYAL . . . . I. L. R., 7 All., 516

3. ——— and s. 12—*Transfers by act of parties—Assignments by operation of law.*—Ss. 10 and 12 of the Transfer of Property Act (IV of 1882) relate only to transfers by act of parties. IN THE MATTER OF THE WEST HOPETOWN TEA COMPANY . . . I. L. R., 12 All., 192

——— ss. 10, 11.

See RIGHT OF SUIT—CONTRACTS AND AGREEMENTS . I. L. R., 8 All., 452

——— s. 14.

See PERPETUITIES, RULE AGAINST.
[I. L. R., 20 Bom., 511

——— s. 35.

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 22 Mad., 289

——— s. 39.

See HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIDOW.
[I. L. R., 23 Bom., 342
I. L. R., 27 Calc., 194
I. L. R., 22 All., 326

——— s. 41.

See N.-W. P. RENT ACT, s. 7.
[I. L. R., 8 All., 409

——— *Ostensible ownership—Purchase bonâ fide for value from ostensible owner—Laches—Decision based upon ground not specifically pleaded.*—Where a Court sees that the rights of one of two innocent parties must be sacrificed, it is entitled to consider whether anything in the conduct of the party who comes into Court and seeks relief has debarred him from asserting his right. Where the plaintiff had for many years left another person in possession of a house, and the defendant had become at auction sale the *bonâ fide* purchaser for value of the house under a decree against such person as ostensible owner, the Court found that s. 41 of the Transfer of Property Act applied, and dismissed the plaintiff's suit. The Court is not precluded from basing its decision upon a ground not specifically pleaded by either of the parties. THAKURI *v.* KUNDAN . . . I. L. R., 17 All., 280

——— s. 43.

See EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.
[I. L. R., 18 Mad., 492

See VENDOR AND PURCHASER—MISCELLANEOUS CASES.
[I. L. R., 14 Mad., 459

——— s. 44.

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENER . . I. L. R., 13 Mad., 275

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 45.

See SALE FOR ARREARS OF REVENUE—PURCHASERS, RIGHTS AND LIABILITIES OF.
[4 C. W. N., 465

——— s. 48.

See N.-W. P. RENT ACT, s. 7.
[I. L. R., 8 All., 409

——— s. 51.

See DECREE—FORM OF DECREE—MORTGAGE . . I. L. R., 8 All., 502

——— s. 52.

See FOREIGN COURT, JUDGMENT OF.
[I. L. R., 19 Mad., 257

See CASES UNDER LIS PENDENS.

——— *Registered and unregistered documents—Transfer of property "pendente lite"—Act III of 1877 (Registration Act), s. 50.*—*B* held a decree for the sale of property which had been mortgaged to him by an instrument which was not compulsorily registrable, and was not registered. *N* purchased the same property *pendente lite* by a registered deed of sale. *Held* that there was here no competition between a registered and an unregistered instrument to which s. 50 of the Registration Act could apply; and that *N*'s purchase was, by s. 52 of the Transfer of Property Act, subject to the decree passed in *B*'s favour. BHAGWAN DAS *v.* NATHU SINGH . . . . I. L. R., 6 All., 444

——— s. 53.

See LIS PENDENS.
[I. L. R., 13 All., 371

See REGISTRATION ACT, 1877, s. 50.
[I. L. R., 8 All., 540

1. ——— *Stats. 13 Eliz., c. 5, and 27 Eliz., c. 4—Voluntary transfers as against creditors or subsequent transferees for consideration—Notice—Registration—Duty of mortgagee in searching for prior incumbrances—Post-nuptial settlement with power of appointment to wife—Deed of appointment in favour of children—Secrecy as evidence of fraud—Subsequent mortgage by wife and trustee of settlement without mention of deed of appointment.*—In 1870 the defendant *J* and her husband executed a post-nuptial settlement by which they assigned certain Municipal debentures to the defendant *E* (the brother of *J*) and one *G* "upon trust for *J* during her life and after her death as she should by deed or will appoint," and subsequently the trustees, in pursuance of a power given them by the settlement, sold the debentures and invested the proceeds in house property in Calcutta, such house and premises thereafter representing the trust property and being held by the trustees on the trusts of the settlement. On the 17th December 1878 *E* retired from the trust and made over his interest to the remaining trustee *G*, and on the same day *J* executed a deed of appointment in favour of her children representing to her solicitor that she did so to protect the property from her husband.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

The deed of appointment was witnessed by *E*, and was duly registered, but it was not mentioned in the deed which assigned the trust property to *G*, and no information of it was given to him, the deed remaining in *J*'s custody and not being made over to *G*. In 1884 *G* retired from the trust, and *E* became sole trustee in his place In March 1884 money was raised by *J* and *E* on mortgage of the trust property to *G*, but no mention of the deed of appointment was made in the mortgage deed *J*'s husband died in October 1884, but neither then, nor on the occasion

pressed his wife for money, or that he died leaving no property In 1890 *F* and *J* mortgaged the house and premises to the plaintiffs, the mortgage deed (which was duly registered) reciting the settlement of 1870, and that "*J* has not made any irrevocable appointment of the said trust premises under the power of appointment given to her in the settlement," but making no mention of the deed of appointment executed by her in 1878 A deed of further charge was also executed by *J* and *F* in 1891 in favour of the plaintiffs also without any mention of the deed of appointment this was also duly registered Before execution of the mortgage of 1890 the plaintiffs' solicitors did not search the register of deeds further back than 1884, because they were dealing with persons who must have known of the exercise of the power of appointment, and who had given a covenant that no such exercise had been made, and because they then found that *G*, the former trustee had taken a similar security himself in 1884 and must have been satisfied that no such blot existed on the title They had moreover, a letter from *G*'s solicitors saying that they had searched the register up to 1884 *J* first set up the deed of appointment as a

therefore not binding on her; that the deed of appointment was made in consideration of her natural love and affection for her children; and that the plaintiffs had notice of it On the facts the lower Court (SALE *J*) found that she had full and complete knowledge of the contents of the mortgage deeds and was bound by them, and that there was gross fraud towards the plaintiffs on the part of *J* in suppressing the fact of the existence of the deed of appointment *Held* by SALE *J*, that according to the law which existed in India prior to the passing of the Transfer of Property Act, the deed of appointment was a voluntary conveyance and fraudulent within the meaning of the Stat. 27 Eliz., c. 4, and void as against the plaintiffs as subsequent transferees for valuable consideration; the legal presumption of fraud which the Court was entitled to make on the cases decided on that statute rendering the question of notice or no notice immaterial *Judah v Abdool Kureem, 22 W R, 60*, *Doe d Otley v Manning, 9 East, 59*, *Doe d Newman v Rushan, 17 Q B, 721* and *Godfrey v Poole, L. R, 13 Ap Cas., 497* referred to S 53 of the Transfer of Property Act has not altered the law in that respect The deed of appointment came within the definition of "transfer of property" given in that Act there being nothing in the Act to suggest that it was intended to confine its operation to transfers by contract The words of s 53, "may be presumed to have been made with such intent as aforesaid" (i e with a fraudulent intent), should be construed in accordance with the cases decided under the Stat 27 Eliz, c 4 Even assuming that it was intended by s 53 to exclude voluntary conveyances of which a subsequent transferee had notice from the presumption of fraud —*Held* on the facts that the plaintiffs had no notice of the deed of appointment The doctrine of notice, if applied must be applied in accordance with and subject to the definition of notice given in the Act itself There was no actual notice, and there was not such an "abstention from inquiry or search" on the part of the plaintiffs as to fix them with constructive notice The words wilful abstention from inquiry and search mean such abstention as would show want of *bona fides* on the part of the plaintiffs in respect of this particular transaction *Agra Bank v Barry, L R 7 I & I, 135* referred to *Held* also that the doctrine of registration amounting to notice, as laid down in the case of *Lakshmandas Sarupchand v Dasrat I L R, 6 Bom, 168* had no application to the present case Having regard to the terms of s 53 of the Transfer of Property Act that doctrine, if applicable, can only apply for the purpose, either of rebutting the presumption of fraud or of preventing the presumption of fraud from arising If the true meaning of that section be that the Court is to presume fraud only in accordance with the facts of each particular case, the facts of the present case were amply sufficient to raise the presumption as regards the deed of appointment That deed therefore was fraudulent as against the plaintiffs and they were entitled to a declaration that it was void and inoperative as against them *Held* on appeal (by PETHERAM, C J, and NORRIS and O'KINEALY, JJ,) that, looking to the unusual way in which the transaction as to the deed of appointment was carried out, and the secrecy given to it the result of which was to enable *F* and *J* to raise money on the trust property by inducing persons to believe that the whole title lay in themselves alone, and on the other facts in the case, apart from the presumption which might be made under s 53 of the Transfer of Property Act, where a transfer is made gratuitously for a grossly inadequate consideration, etc, that it may be presumed to have been made to defraud or defeat creditors the decree of the Court below was correct JOSHUA v ALLIANCE BANK OF SIMLA . I. L. R., 22 Calc., 185

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

2. ———————— *Rights of a transferee in good faith and for consideration—Good faith, Meaning of—Effect of transfer made with the object to delay or defeat a creditor, the transferee not being aware of such an intention.*—Where a transferee for value is not aware of any intention on the part of the transferor to defeat or delay his creditors, but has knowledge only of an impending execution against the transferor, such knowledge of itself is not sufficient to vitiate the transfer, and does not make the transferee a transferee, otherwise than in good faith within the meaning of s. 53 of the Transfer of Property Act (IV of 1882). *Ram burun Singh* v. *Jankee Sahoo, 22 W. R., 473,* referred to. ISHAN CHUNDRA DAS SARKAR *v.* BISHU SIRDAR

[I. L. R., 24 Calc., 825
1 C. W. N., 665

3. ———————— *Transfer in fraud of creditors—Good faith.*—When it is said that a deed is not executed in good faith, what is meant is that it was executed as a mere cloak, the real intention of the parties being that the ostensible grantor should retain the benefit to himself. RAMASAMIA PILLAI *v.* ADINARAYANA PILLAI

[I. L. R., 20 Mad., 465

4. ———————— *Debtor and creditor—Intent to delay and defeat creditors—Stat. 13 Eliz., c. 5.*—A mere preference by a debtor of one creditor to another, and *à fortiori* a mere *bonâ fide* security given to a creditor to the extent of his debt, is not within s. 53 of the Transfer of Property Act, 1882, as it is not within the English Statute of 13 Eliz., c. 5. But where a document given by way of security goes further and secures debts that are not due, the effect is, *quoad* such fictitious debts, to defeat or delay the creditors. Where a party intends to reply upon a document as not within s. 53 of the Transfer of Property Act because it merely creates a preference in favour of certain creditors over the rest, he must show strictly that the document is such and nothing more. NARAYANA PATTAR *v.* VIRARAGHAVAN PATTAR . I. L. R., 23 Mad., 184

5. ———————— *Assignment in fraud of creditors—Interest taken under will.*—*B* died in 1891, leaving a widow (defendant No. 1) and two sons *P* and *D* (defendants Nos. 4 and 5). By this will he gave his widow a life-interest in the rents and income of his property subject to the obligation of maintaining, educating, and bringing up the children. After his death the property, moveable and immoveable, was to be divided among his sons equally when *D* should attain the age of 25. He attained majority in October 1895. On the 13th June 1895 the plaintiffs obtained a decree for R3,976-10-10 against the widow and her son *P*. In execution of that decree they attached under an order, dated 2nd July 1895, the immoveable properties which had belonged to the testator's estate on the ground that both the widow and *P* had an interest in them. The defendants alleged (*inter alia*) that by an assignment dated the 20th February 1896 the widow had assigned and surrendered her life-interest to her son *D*, and that such interest was therefore not available to satisfy the plaintiff's decree against her. As to *P*'s interest, the defendants alleged that by a deed of settlement, dated the 9th February 1895, it was validly settled for the benefit of himself and his family, and that therefore he had no interest in him which could be attached under the order of the 2nd July 1895. That even independently of the attachment, her assignment to her own son *D* was invalid as against the plaintiffs under s. 53 of the Transfer of Property Act (IV of 1882). The object of that assignment was to protect the property from the creditors, and it was designed to defeat the plaintiff's decree and it was therefore fraudulent and void as against the plaintiffs. That the deed of settlement by *P* of the 9th February 1895 was void as against the plaintiffs under s. 53 of the Transfer of Property Act (IV of 1882). That the plaintiffs were entitled to realize the shares and interest both of the widow and of *P* so far as might be necessary to satisfy their decree of 13th June 1895. NATHA KERBA *v.* DHUNBAIJI . . . . I. L. R., 23 Bom., 1

———— s. 54.

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—GENERALLY.
[I. L. R., 16 All., 344

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ.
[I. L. R., 7 All., 482, 626

See REGISTRATION ACT, 1877, s. 17.
[I. L. R., 10 All., 20.
I. L. R., 27 Calc., 468

See REGISTRATION ACT, 1877, s 18.
[I. L. R., 18 Mad., 454

See REGISTRATION ACT, s. 48.
[I. L. R., 13 Mad., 324
I. L. R., 27 Calc., 468

See CASES UNDER VENDOR AND PURCHASER—COMPLETION OF TRANSFER.

See VENDOR AND PURCHASER—INVALID SALES . I. L. R., 18 Mad., 61

———————— *Optional registration.*—*Per* GARTH, *C.J.*—S. 54 of the Transfer of Property Act virtually abolishes optional registration. NARAIN CHUNDER CHUCKERBUTTY *v.* DATARAM ROY
[I. L. R., 8 Calc., 597 : 10 C. L. R., 241

———— s. 55.

See LIMITATION ACT, 1877, ART. 116.
[I. L. R., 21 Mad., 8

See VENDOR AND PURCHASER—BREACH OF COVENANT . I. L. R., 15 Mad., 56
[I. L. R., 25 Calc., 298
2 C. W. N., 222
I. L. R., 21 Mad., 8

See VENDOR AND PURCHASER—VENDOR, RIGHTS AND LIABILITIES OF.
[I. L. R., 13 Mad., 158

———————— *Meaning of words "material pefects"—Defect in title.*—The expression, "material

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

defect in the property" in s. 55 of the Transfer of Property Act (IV of 1882) includes a defect in the title to an estate ESSA SULLEMAN *v* DAYABHAI PARMANANDAS . . I. L R, 20 Bom., 522

——— s 58

See DECREE—CONSTRUCTION OF DECREE —MORTGAGE . I. L. R., 19 Mad, 249
[I. R., 23 I. A., 32

See LIMITATION ACT, 1877, ART. 147
[I. L. R., 16 Mad, 64

See LIMITATION ACT, 1877, ART 148
[I. L R., 14 Bom., 113

See MORTGAGE—ACCOUNTS.
[I. L. R., 14 Bom., 113

See [illegible]

[illegible]

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
[I. L. R., 22 Calc., 33

See PRE-EMPTION—CONSTRUCTION OF WAJIB UL-URZ
[I. L. R., 7 All., 258, 343

See REGISTRATION ACT, s. 49
[I. L. R., 15 Mad, 253

——— s 59

See BENGAL TENANCY ACT, s 12.
[3 C. W. N., 499

See COMPROMISE—COMPROMISE OF SUITS UNDER CIVIL PROCEDURE CODE.
[I. L. R., 9 Mad, 103

See CASES UNDER DEED—EXECUTION

See DEPOSIT OF TITLE DEEDS
[I. L. R., 14 All., 238
I L. R., 17 All., 252
I. L R., 24 Calc., 348

See EVIDENCE ACT, 1872, s 68
[I. L. R., 18 Mad., 29
I. L. R., 2d Calc., 228

——— *Oral agreement for kanam—Suit for ejectment by a jenmi.*—A jenmi in Malabar sued to eject a tenant, who proved by oral evidence that he had one year before suit paid to the plaintiff a sum of money as a renewal fee and the plaintiff agreed to demise the land to him on kanom for a period of twelve years *Held* that, although no instrument had been executed and registered, the plaintiff was not entitled to eject the defendant. ITTAPPAN *v.* PARANGODAN NAYAR
[I. L. R., 21 Mad., 291

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

s 60

See ATTACHMENT—SUBJECTS OF ATTACHMENT—EQUITY OF REDEMPTION.
[I. L. R., 21 Bom, 226

See MALABAR LAW—MORTGAGE
[I. L. R., 16 Mad., 328

See MORTGAGE—REDEMPTION—REDEMPTION OF PORTION OF PROPERTY
[I. L. R, 17 All., 63
I. L R., 21 Mad., 369
I. L. R., 20 All., 23
4 C. W. N., 507
I. L. R., 22 Mad., 209

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . I. L. R., 16 Mad, 486
[I. L. R., 23 Mad., 33

See MORTGAGE — REDEMPTION — RIGHT OF REDEMPTION
[I. L. R., 22 All., 238

——— *Right of redemption, Extinguishment of—Breach of condition in mortgage deed—Conditional sale.*—The breach of a condition in a mortgage-deed to the effect that on default of payment on a certain date the mortgage shall be deemed an absolute sale does not amount to an ex[illegible]

——— ss. 61 and 62

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I. L. R., 16 All, 295

——— s 62

See MORTGAGE—REDEMPTION MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . . I. L. R., 8 All., 402

See MORTGAGE—REDEMPTION—REDEMPTION OTHERWISE THAN ON EXPIRY OF TERM . . I. L R, 16 Mad., 486
[I. L. R, 23 Mad., 33

——— s 63

See MORTGAGE—ACCOUNTS
[I. L. R., 17 All., 282

s 65

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R., 10 Calc., 443

——— ——— and s 68—*Mortgagor and mortgagee—Construction of mortgage—Sale of premises at suit of a prior mortgagee—Right of a second mortgagee to sue the mortgagor personally.*—The defendants, having already mortgaged certain land to another, executed a hypothecation bond comprising the same land in favour of the plaintiff to secure

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

a debt due by them to the plaintiff and covenanted therein to pay to him daily the proceeds of certain sales of firewood, of which the plaintiff was to credit part towards the secured debt. The defendants having failed to pay the amount due on the first mortgage, the first mortgagee obtained a decree and brought the land to sale. The plaintiff then brought a suit in the Small Cause Court to recover the amount due on footing of his hypothecation-bond. *Held* that the hypothecation-bond contained no personal covenant by the obligors, but that on the construction of ss. 65 and 68 of the Transfer of Property Act the obligors had committed default so as to entitle the obligee to sue them personally under the former section. SINGJEE *v.* TIRUVENGADAM

[I. L. R., 13 Mad., 192

——— s. 67.

See LIMITATION ACT, 1877, ART. 122. [I. L. R., 24 Calc., 473

See LIMITATION ACT, 1877, ART. 132. [I. L. R., 20 Calc., 269

See LIMITATION ACT, 1877, ART. 147. [I. L. R., 16 Mad., 64

See MORTGAGE—POWER OF SALE. [I. L. R., 12 Mad., 109
I. L. R., 21 Bom., 267

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES. [I. L. R., 9 All., 68

1. ——— *Right of suit—Suit for sale by usufructuary mortgagee.*—Under s. 67 (*a*) of the Transfer of Property Act (IV of 1882), a usufructuary mortgagee whose possession has not been disturbed cannot maintain a suit either for foreclosure or for sale on non-payment of the mortgage-money. *Choudhri Umrao Singh* v. *Collector of Moradabad, S. D. A., N. W., 1859, p. 13; Dulli* v. *Bahadur, 7 N. W., 55; Ganesh Kooer* v. *Deedar Buksh, 5 N. W., 128; Venkatasami* v. *Subramanya, I. L. R., 11 Mad., 88;* and *Jhabbu Ram* v. *Girdhari Singh, I. L. R., 6 All., 289,* referred to. UMDA *v.* UMRAO BEGAM . . I. L. R., 11 All., 367

2. ——— *Usufructuary mortgage—Remedy of mortgagee.*—A usufructuary mortgagee is not entitled, in the absence of a contract to that effect, to sue for sale of the mortgaged property. *Semble*—The construction placed on s. 67 (*a*) of the Transfer of Property Act, 1882, in *Venkatasami* v. *Subramanya, I. L. R., 11 Mad., 88,* that a usufructuary mortgagee can sue either for foreclosure, or for sale, but not for one or other in the alternative is wrong. CHATHU *v.* KUNJAN

[I. L. R., 12 Mad., 109

3. ——— and s. 58 (d)—*Usufructuary mortgage with a personal covenant—Suit by mortgagee for sale—Right of suit.*—In a suit for sale by a mortgagee it appeared that the mortgage comprised a covenant by the mortgagor for payment of the mortgage amount, but otherwise answered the definition of a usufructuary mortgage contained in the Transfer of Property Act, s. 58 (*d*). *Held* that the mortgagee was not precluded by the Transfer of Property Act, s. 67, from bringing the property to sale under the mortgage. RAMAYYA *v.* GURUVA . . . I. L. R., 14 Mad., 232

4. ——— and s. 68—*Usufructuary mortgage—Dispossession of mortgagee—Suit for sale—Right of suit.*—The plaintiff, at the request of the mortgagors, paid off part of the debt due on a usufructuary mortgage to one of two mortgagees thereunder, and was placed by the mortgagors in possession under a usufructuary mortgage of that part of the mortgage premises which has been in the enjoyment of the mortgagee so paid off, who executed a release. The other mortgagee under the first mortgage obtained a decree for sale on the footing of that instrument, and the mortgaged premises were sold "subject to the establishment" of the plaintiff's claim: the decree-holder purchased and afterwards assigned his rights to two of the present defendants who dispossessed the plaintiff. The plaintiff then sued the mortgagors and mortgagees and the defendants above referred to. *Held* the plaintiff was not entitled to a decree for sale. *Semble*—The plaintiff might have sued to have the sale, which had taken place at the suit of the first usufructuary mortgagee, declared to be invalid as against him. SAMAYYA *v.* NAGALINGAM . . . . I. L. R., 15 Mad., 174

5. ——— and s. 68 (a)—*Mortgagee's right to sue for mortgage-money and for sale—Usufructuary mortgage—Covenant to repay mortgage-money—Right of suit.*—The first defendant executed a usufructuary mortgage of certain land in favour of plaintiff's deceased husband. It contained a covenant to pay the mortgage-money in Chittrai Kalavadi of the year 1883. This covenant was followed by these words: "If I fail to pay the mortgage amount in the said Kalavadi, then you shall receive the said mortgage amount in the Chiattri Kalavadi of whatever year I may pay it, deliver the said lands to my possession having cleared off the arrears of Government revenue, and also give back the bond." The plaintiff sued to recover the money secured from the defendant personally and also by sale of the mortgaged property. *Held* by a Full Bench that the bond contained a covenant to pay, and that therefore the suit was maintainable. SIVAKAMI AMMAL *v.* GOPALA SAVUNDRAM AYYAN

[I. L. R., 17 Mad., 131

6. ——— and ss. 83, 84—*Suit by mortgagee instituted before payment into Court—Right of mortgagee to a decree.*—In a suit to recover money due on a mortgage, defendant paid the money into Court and a notice was issued to the mortgagee under s. 83 of the Transfer of Property Act. The mortgagee filed his suit before notice was served on him, and it was not proved that the mortgagee was aware of the fact of payment into Court when he filed his suit. *Held* that the plaintiff was not debarred by s. 67 of the Transfer of Property Act from obtaining a decree. SITARAMAYYA *v.* VENKATRAMANNA . . I. L. R., 11 Mad., 371

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

7. — ——— — and ss 86, 89—*Usufructuary mortgage dated 20th April 1882 sued on in 1884—Form of decree*—In a suit filed in 1884 on a usufructuary mortgage, dated 20th April 1882, a decree was passed for the payment of the mortgage-money, or in default for the sale of the mortgaged property *Held* (*Semble* under the Transfer of Property Act) that the decree for sale was the right decree VENKATASAMI *v* SUBBAMANNYA . I. L R., 11 Mad , 88

8 ——— and s 90—*Suit for money-decree on mortgage with personal covenant Execution against mortgaged property—Sale of security in execution of decree*—A mortgage-deed contained a personal covenant to pay and a suit was brought on such personal liability *Held* that the mortgagees were entitled to waive their right to proceed against the mortgaged property and to bring a suit only for a money decree but that they could not bring to sale the mortgaged property in execution of such decree without recourse to the provisions of s 67 of the Transfer of Property Act. RAM KESHUB DEB *v* SONATUN PAL [2 C W. N., 320

9. ——— *Decree for payment of money* [illegible] *Charge—Consent* [illegible] ree [illegible] be [illegible] set forth in a schedule annexed to the decree stand charged with payment of the said instalments, the said properties cannot be sold in execution of the decree, but a separate suit must be brought under s 67 of the Transfer of Property Act AUBHOYESSURY DABEE *v* GOURI SUNKUR PANDAY [I. L R , 23 Calc , 859

10 ——— and s 99—*Charge for maintenance created by a decree, how enforced—Civil Procedure Code (1882), s 214 (c)—Separate suit*—Where a decree, after declaring the amount payable to the plaintiff in respect of future maintenance, and that it should be a charge on certain immoveable property which formed a specific item in [illegible] property, on her executing a release of all her rights and interest in the general estate,—*Held* that such a charge was properly enforced by a suit brought on the deed, and that it could not be given effect to by proceedings in execution *Aubhoyessury Dabee v Gouri Sunkur Panday, I L R, 22 Calc., 859*, followed *Ashutosh Banerjee v Lukhimoni Debya, I L R, 19 Calc, 139*, distinguished MATANGINI DASSEE *v* CHOONEYMONEY DASSEE [I. L. R , 23 Calc , 803

11 — ——— *Usufructuary mortgage—Sudbharna bond—Covenant to repay—Construction of bond—Suit for money and for sale—Form of decree*—In a sudbharna mortgage bond it was stipulated, "having paid the principal money in the month of Chait 1297 we shall take back the document and the land. In case we fail to repay the principal money on due date, the sudbharna bond shall remain in force" *Held* that there was in this contract no agreement to repay the principal money and no such agreement was implied by the provisions as to taking back the document and the land, and therefore there was no right to a money-decree *Held* that under s. 67 of the Transfer of Property Act (IV of 1882) an usufructuary mortgage cannot as such (*i e*, unless there is anything in the contract which would imply the right) sue either for foreclosure or for sale *Umda v Umrao Begam, I L R, 11 All, 367; Chathu v. Kunjan, I L R, 12 Mad, 109* and *Ramayya v Guruva, I L R, 14 Mad, 232*, referred to *Venkatasami v Subramanya, I L R, 11 Mad, 88*, not followed LUCHMESHAR SINGH *v*. DOOKH MOCHAN JHA I L. R , 24 Calc., 677

12. — ——— *Charge—Attachment without sale—Transfer of Property Act (IV of 1882), ss 99 100*—The plaintiff, a judgment-creditor, had in the High Court obtained a decree against the defendant, whereby it was ordered that the defendant should pay to the plaintiff a sum of R1 68 123 and that the said sum should be a charge on certain immoveable properties situated in the mofussil and specified in a schedule to the decree In August 1894 the plaintiff obtained an order for transfer of the decree to a mofussil Court and sent a copy of the decree for execution there He obtained in that Court an order for attachment and sale of the property, but the order was reversed on appeal in May 1895 the High Court holding that the properties could not be sold in execution of the decree but that a separate suit must be brought under s 67 of the Transfer of Property Act The plaintiff then applied to the [illegible] as to the plaintiff's right to attach the property as distinct from a sale or to sell it except after a suit under s 67 of the Transfer of Property Act *Held* on appeal (reversing the decision of SALE J.) that an order for attachment only as distinct from a sale could be made *Aubhoyessury Dabee v Gouri Sunkar Panday, I L R, 22 Calc, 859*, explained *Chundra Nath Day v. Burroda Shoondury Ghose, I L R, 22 Calc, 813*, referred to GOURI SUNKER PANDAY *v* AUBHOYESWARI DABEE [I. L. R., 25 Calc., 263

See CHUNDRA MONI DASSEE *v* MOTTY LAL MULLICK . . 2 C. W N., 33

——— s. 68.

See LIMITATION ACT, 1877, art 116 [I. L. R., 21 Mad., 242

See MORTGAGE—POSSESSION UNDER MORTGAGE . I. L. R., 9 All , 298

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE . I. L. R., 22 Mad., 332

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

1. ———— *Mortgage of non-transferable property—Right to sue for mortgage-money.*—Where a decree was obtained by a landholder for cancelment of a deed whereby an occupancy-holding was mortgaged with possession, and the mortgagee consequently failed to obtain possession and brought a suit against the mortgagor to recover the mortgage-money,—*Held* that, inasmuch as the mortgagor must have known that he was mortgaging an estate not legally transferable, while the mortgagee might have believed that the estate was transferable, the act of the former was a default depriving the latter of his security within the meaning of s. 68 (*b*) of the Transfer of Property Act (IV of 1882), and the mortgagee was therefore entitled to succeed. GANESH SINGH *v.* SUJHARI KUAR . **I. L. R., 10 All., 47**

2. ———— *Sale of mortgaged premises under Land Acquisition Act—Personal suit by mortgagee.*—The sale of mortgaged premises under the Land Acquisition Act is not a destruction of the security within the meaning of s. 68 of the Transfer of Property Act, and does not enable the mortgagee to sue the mortgagor personally. ARUMUGAM *v.* SIVAGNANA **I. L. R., 13 Mad., 321**

3. ———— *Failure of mortgagor to give possession as stipulated—Personal suit for mortgage amount.*—In a suit against a mortgagor for the principal and interest due on a mortgage, it appeared that the payment of interest had fallen into arrears, and that the mortgage-deed provided that in such event the mortgagee should be entitled to possession of the mortgage-premises; the mortgagor falsely alleged that all the interest due had been tendered. *Held* that the mortgagee was entitled under s. 68 of the Transfer of Property Act to sue for the amount due on the mortgage. SARAVANA *v.* CHINNAMMAL . . **I. L. R., 15 Mad., 65**

4. ———— *Personal decree against mortgagor—Right of suit.*—Suit for a personal decree on a usufructuary mortgage which contained no express covenant to pay, but provided that, if the mortgagor repaid the secured debt before a certain date (now passed), he should be replaced in possession. The mortgaged premises had been attached in execution of a decree obtained by a third party against the mortgagor, and a claim preferred by the plaintiff having been erroneously rejected and the premises sold, he was dispossessed. The mortgagee accordingly brought his suit as above. *Held* that the plaintiff was not entitled to maintain the suit either under the terms of the mortgage or under Transfer of Property Act, s. 68. GOPALASAMI *v.* ARUNACHELLA **[I. L. R., 15 Mad., 304**

5. ———— *Right of suit—Usufructuary mortgage—Mortgagee kept out of possession by mortgagor's indirect conduct.*—Where a usufructuary mortgagee is unable to obtain possession of the mortgaged property owing to his mortgagor having executed a subsequent mortgage and placed the second mortgagee in possession, the first mortgagee may elect to sue at once for the money under s. 68 of the Transfer of Property Act, instead of for possession of the land. LINGA REDDI *v.* SAMA RAU **[I. L. R., 17 Mad., 469**

6. ———— *Usufructuary mortgage—Lease of mortgaged premises by mortgagee to mortgagor—Mortgagor holding on after expiry of lease—Right of suit.*—*H L* and others, mortgagees, under a usufructuary mortgage executed in their favour by one *G* (the usufruct being applicable in satisfaction of the interest of the debt), leased the mortgaged premises to the mortgagor. The lease was for a term certain with a covenant that the mortgagor might renew on compliance with certain conditions. The mortgagor, on the expiry of the lease, did not fulfil the conditions of the said covenant, but refused to give up possession of the mortgaged property to the mortgagees. *Held* that the mortgagees were entitled, either under cl. (*b*) (as held by EDGE, *C.J.*, and TYRRELL, *J.*) or under cl. (*c*) (as held by KNOX, BANERJI, and BURKITT, *JJ.*) of s. 68 of Act IV of 1882, to a money-decree for the amount due under the mortgage. *Shitab Dei* v. *Ajudhia Prasad, Weekly Notes, All. (1887), p. 269,* and *Jhabbu Ram* v. *Girdhari Singh, I. L. R., 6 All., 298,* distinguished. HIRA LAL *v.* GHASITU . **I. L. R., 16 All., 318**

7. ———— *Usufructuary mortgage—Dispossession of mortgagee by a trespasser—Suit for recovery of the mortgage-money.*—The words "any other person" in the concluding portion of cl. (*c*) of s. 68 of the Transfer of Property Act mean "any other person having a title." The disturbance of the mortgagee's possession by a trespasser will not confer upon the mortgagee a right to sue the mortgagor for the mortgage money. *Gopalasami* v. *Arunachella, I. L. R., 15 Mad., 304,* followed. NAKCHEDI RAM *v.* RAM CHARITAR RAI **[I. L. R., 19 All., 191**

8. ———— *Usufructuary mortgage—Possession not given—Suit for sale.*—A usufructuary mortgagee to whom the mortgagor fails to deliver or to secure possession of the property mortgaged is not entitled to claim in a suit for the money an order for the sale of such property. So held by the Full Bench in a case where the mortgage contained no covenant to pay. ARUNACHALAM CHETTI *v.* AYYAVAYYAM . . **I. L. R., 21 Mad., 476**

———— s. 69.

See MORTGAGE—POWER OF SALE. **[I. L. R., 11 Mad., 201**

———— *Limits of town of Bombay—Land situate in district of Mahim.*—Land situate in the district of Mahim within the Island of Bombay, and within the local limits of the original jurisdiction of the High Court, is situate within the town of Bombay, in the sense in which that expression is used in s. 69 of the Transfer of Property Act. TRIMBAK GANGADHAR RANADE *v.* BHAGWANDAS MULCHAND . . **I. L. R., 23 Bom., 348**

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 72.

See MORTGAGE—ACCOUNTS
[I. L. R., 19 Mad., 327
I. L. R., 21 Mad., 32
I. L. R., 20 All., 401

——— S. 72 of the Transfer of Property Act only reproduces the rules of law which Courts of justice in India have uniformly adopted. GIRDHAR LAL *v.* BHOLA NATH
[I. L. R., 10 All., 611

——— s. 73

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS.
[I. L. R., 15 Calc., 546

See SALE FOR ARREARS OF RENT—SURPLUS PROCEEDS OF SALE
[I. L. R., 20 Calc., 214
I. L. R., 24 Calc., 746

——— s. 74.

See DECREE—FORM OF DECREE—MORTGAGE . I. L. R., 18 All., 189

See MORTGAGE — SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
[I. L. R., 19 All., 527

——— *Redemption of prior mortgage—Extinguishment of prior mortgage—Title* [illegible]

The mortgagee assigned his mortgage to defendant No. 1 on the 7th December 1882. On the 23rd December 1889 the mortgagors executed to the plaintiff a deed of usufructuary mortgage of the same land to secure R1,400; the deed stated that the money was borrowed with a view to discharge a [illegible] have under- [illegible] I credit you [illegible] cash." The [illegible] on the 18th [illegible] session other [illegible]

——— s. 75

See MORTGAGE—SALE OF MORTGAGED PROPERTY—PURCHASERS
[I. L. R., 20 Bom., 390

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES
[I. L. R., 19 All., 527

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 76.

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R., 10 Calc., 443

See MORTGAGE—ACCOUNTS
[I. L. R., 6 All., 303
I. L. R., 15 Mad., 230

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[I. L. R., 16 All., 386

——— s. 78

See MORTGAGE—MARSHALLING
[I. L. R., 12 Mad., 424, 429
I. L. R., 13 Mad., 383
I. L. R., 15 Mad., 268

——— *Transfer of Property Act (IV of 1882), ss. 3, 78—Gross negligence—How far registration amounts to notice—Registration Act, s. 60.*—Where a mortgagee prior in date duly investigated the title of the mortgagor but after the execution of the mortgage returned the title-deeds to the mortgagor according to the custom prevailing in the mofussil and subsequent thereto a mortgagee in Calcutta advanced moneys on one of those title-deeds without any actual notice of the prior mortgage, but without having duly investigated the mortgagor's title or searched the register:—*Held*, that the prior mortgagee was not within s. 78 of the Transfer of Property of Act guilty of such gross negligence as would postpone her mortgage to the subsequent mortgagee, and the conduct of the subsequent mortgagee was not such as to create any predominating equity in his favour. The fact that there is in this country a universal system of registration is one of the circumstances to be taken into consideration in determining the question of gross negligence. *Semble*—The question whether registration is notice or not is a question of fact and as each case arises it should be determined whether the omission to search the register together with the other facts amounts to such gross negligence as to attract the consequence which results from notice. *Temb v. Pond, 2 Bro. C. C., 652; Evans v. Bicknell, 6 Ves., 174; Martinez v. Cooper, 2 Russ., 198; Farrow v. Rees, 5 Beav., 18; Hunt v. Elmes, 2 DeG. F. & J., 578;* and *Agra Bank v. Barry, L. R., 7 H. of L. at p. 149,* referred to. MONINDRA CHANDRA NANDY *v.* TROYLUCKHOO NATH BYSAK 2 C. W. N., 750

——— s. 80.

See RIGHT OF SUIT—SALE IN EXECUTION OF DECREE I. L. R., 13 All., 546

——— s. 81.

See MORTGAGE—MARSHALLING
[I. L. R., 12 Mad., 255
I. L. R., 23 Calc., 790
2 C. W. N., 397

——— s. 82.

See MORTGAGE—MARSHALLING
[I. L. R., 23 All., 234

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

to that of persons who were entitled to it *Held* that he was not entitled to claim the benefit of *ss.* 83 *and* 84 of the Transfer of Property Act, inasmuch as the persons really entitled to the money could not draw it MAIHAVI AMMA *v.* KUNHI PATHUMMA . I L R., 23 Mad., 510

—— s. 84.

See MORTGAGE—REDEMPTION—MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L R, 8 All, 502

—— s 85.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER
[I. L. R, 27 Calc, 724

See CASES UNDER PARTIES—PARTIES TO SUITS—MORTGAGES, SUITS CONCERNING

—— s 86.

See s 2
[illegible]

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE I. L. R, 20 Calc., 279

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED

See LIMITATION ACT, 1877, ART. 135
[I. L. R, 12 Calc, 614

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 13 Calc., 346

—— —— *Power of Court to make preliminary decree absolute when appeal is pending*—Pendency of an appeal against a preliminary decree made under s. 86 of the Transfer of Property Act does not prevent the Court which passed the decree from making it absolute MADAN MOHUN MITTER *v.* RAM HURI SAHU 1 C. W. N., 197

—— s 87.

See APPEAL—DECREES.
[I. L. R., 12 All., 61
I. L. R., 14 All., 520

See DECREE—CONSTRUCTION OF DECREES—MORTGAGE I. L. R., 20 Calc., 279
[I. L. R., 25 Calc, 311

See LIMITATION ACT, 1877, ART 147.
[I L. R., 16 Mad., 64

See LIMITATION ACT, 1877 ART 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE
[I. L. R., 20 All, 357

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION I. L. R., 16 Calc, 246
[I. L. R, 20 All., 358, 446
I. L. R., 19 Mad, 40
I. L. R., 19 All, 160
I. L. R., 22 Mad., 133
I. L. R., 27 Calc., 705

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 13 Calc, 346

—— s 88

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I L. R, 16 All, 259

See DECREE—CONSTRUCTION OF DECREE—GENERAL CASES I. L. R., 20 All., 397

See DECREE—CONSTRUCTION OF DECREE—MORTGAGE I. L. R., 20 Mad., 78
[I. L R., 25 Calc, 311

See HINDU LAW—ALIENATION—ALIENATION BY FATHER I. L. R., 15 All, 75

See CASES UNDER INTEREST—OMISSION TO STIPULATE FOR, OR STIPULATED TIME HAS EXPIRED—CONTRACTS

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHT OF MORTGAGEES.
[I L R, 18 All., 31

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—GENERAL CASES.
[I. L. R, 22 Mad., 286

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY
[I. L. R., 23 Calc., 682

—— ss 88 and 89

See CIVIL PROCEDURE CODE, 1882 s 244—QUESTIONS IN EXECUTION OF DECREE.
[I. L. R., 18 Calc., 139
I. L. R., 25 Calc., 133

See CIVIL PROCEDURE CODE, 1882 s 257A
[I. L R., 19 All, 186

See EXECUTION OF DECREE—PROCEEDINGS IN EXECUTION I. L. R., 13 All., 278

See LIMITATION ACT, 1877, ART 179—PERIOD FROM WHICH LIMITATION RUNS—DECREES FOR SALE
[I L R., 10 All, 520
I. L. R., 20 All., 302, 357

[illegible]

—— ss. 88, 89, 90

See CASES UNDER EXECUTION OF DECREE—MODE OF EXECUTION—MORTGAGE.

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

—— s. 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTION IN EXECUTION OF DECREE. [I. L. R., 24 Calc., 473

See DEKKAN AGRICULTURISTS ACT, s. 44. [I. L. R., 23 Bom., 644

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT. [I. L. R., 21 Calc., 818

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS . I. L. R., 17 All., 581
[I. L. R., 18 All., 316
I. L. R., 19 All., 174
I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 122. [I. L. R., 24 Calc., 473

See LIMITATION ACT, 1877, ART. 178. [I. L. R., 16 All., 23
I. L. R., 22 Calc., 924

See LIMITATION ACT, 1877, ART. 179—LAW APPLICABLE TO EXECUTION. [I. L. R., 23 Bom., 644

—— s. 90.

See INTEREST — OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED. [I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 178. [I. L. R., 21 All., 453

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES . . I. L. R., 18 All., 371

1. —— *Decree for sale on a mortgage—Mortgaged property—Sale in execution of a decree held by a different mortgagee.*—In order to make the remedy provided by s. 90 of the Transfer of Property Act available, it is necessary that the mortgaged property should have been sold in execution of the decree held by the person applying for a further decree under s. 90. That section does not apply where the mortgaged property has been sold under a decree held by some other person. *Mahammad Akbar* v. *Munshiram, Weekly Notes, All., 1899, 208,* followed. BADRI DAS *v.* INAYET KHAN [I. L. R., 22 All., 404

2. —— and ss. 88 and 89—*Decree for sale of mortgaged property—Decree not satisfied by sale—Recovery of balance due on mortgage.*—The decree contemplated by s. 90 of the Transfer of Property Act (IV of 1882) can be made in the suit in which the decree for sale was passed; and it is not necessary to institute a fresh suit to obtain such decree. RAJ SINGH *v.* PAMANAND [I. L. R., 11 All., 486

—— ss. 92 and 93.

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW . I. L. R., 15 Mad., 170

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

See CASES UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

See RES JUDICATA—CAUSE OF ACTION. [I. L. R., 11 All., 386
I. L. R., 15 Mad., 366
I. L. R., 17 Mad., 96
I. L. R., 19 All., 202

—— s. 93.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT. [I. L. R., 23 Mad., 521

See MORTGAGE — REDEMPTION — MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R., 16 Mad., 214

—— *Mortgage — Redemption — Decree for payment and redemption within six months—Application for execution of decree after six months had expired.*—S. 93 of the Transfer of Property Act (IV of 1882), under which a mortgagor, who has obtained a decree for redemption, may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force. CHENNAYA *v.* MALKAPA . . . I. L. R., 20 Bom., 279

—— s. 95.

See LIMITATION ACT, 1877, ART. 148. [I. L. R., 8 All., 295

—— s. 98.

See MORTGAGE—FORM OF MORTGAGE. [I. L. R., 12 All., 203
I. L. R., 21 Mad., 1

—— s. 99.

See LIMITATION ACT, 1877, s. 8. [I. L. R., 16 Mad., 436

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS. [I. L. R., 12 All., 64

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 22 Bom., 624
[I. L. R., 23 Bom., 119
I. L. R., 22 Mad., 347, 372
I. L. R., 23 Mad., 377

See RES JUDICATA—COMPETENT COURT—GENERAL CASES. [I. L. R., 16 Mad., 481

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS. [I. L. R., 18 All., 325

1. —— *Hindu law—Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Sale of mortgaged property in execution of decree on a money-bond for interest due on the mortgage.*—The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money-bond for the interest then due on the mortgage. In 1882 the mortgagee brought a suit on the money bond, and, having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person. *Held* that the sale did not convey the interest of another undivided brother who was not a party to the [illegible]

2. ——— — *Money-decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee*—A usufructuary mortgagee left the mortgaged premises in the possession of the mortgagor under a rent agreement in 1878. The rent having [illegible] mortgagor [illegible] the arrear [illegible] mortgagor [illegible] its mulgent right" in the mortgaged premises. The decree-holder attached the mortgaged premises in execution, and having brought them to sale and purchased them himself, he sued for possession. *Held* that the sale was invalid under the Transfer of Property Act, s 99. DURGAYYA *v.* ANANTHA [I. L. R., 14 Mad., 74

See VIGNESWARA *v.* BAPAYYA [I. L. R., 16 Mad., 436

3. ——— *Usufructuary mortgage—Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs*—Certain usufructuary mortgagees, not having been put in possession of the mortgaged property by the mort[illegible]

[illegible]

property, reserving their rights and interests under the mortgage. *Held* that such a suit would not lie as being opposed to the intention of s. 99 of the Transfer of Property Act, 1882. *Azim ullah v. Najm un nissa, I. L. R., 16 All., 415,* and *Jadub Lall Shaw Chowdhry v. Madhub Lall Shaw Chowdhry I. L. R., 21 Calc., 34,* referred to. MAHABIR SINGH *v.* SAIBA BIBI [I. L. R., 17 All., 520

4. ——— and s 2—*Suit to set aside sale by mortgagee prior to coming into force of the Act—Construction of Statute*—In a suit brought to set aside a sale effected by a mortgagee prior to the date when Act IV of 1882—(Transfer of Property Act) came into force,—*Held* that the Transfer of Property Act (ss 2 and 99) has no retrospective effect, so as to invalidate an order for sale which constituted a legal relation between the defendants passed before that Act came into force. NARANAPPA *v.* SAMACHARLU I. L. R., 19 Mad., 382

5. ——— and s 67—*Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage*—A mortgagee cannot sell the mortgaged property in execution of an ordinary money-decree in satisfaction of a claim not arising under the mortgage. S. 99 of the Transfer of Property Act limits the right of a decree-holder in such a case and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s. 67 of that Act. *Quære*—Whether the suit to be instituted under s. 99 is a suit on the mortgage or is one on the charge created by attachment. JADUB LALL SHAW CHOWDHRY *v.* MADHUB LALL SHAW CHOWDHRY [I. L. R., 21 Calc., 34

6. ——— and s 67—*Usufructuary mortgage—Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent*—*Held* that a usufructuary mortgagee who had leased the mortgaged premises to his mortgagor could not, in execution of a simple money-decree for rent against the mortgagor, attach and sell the mortgaged premises but must bring a suit as provided by s. 67 of Act IV of 1882. AZIM ULLAH *v.* NAJM UN NISSA I. L. R., 16 All., 415

7. ——— *Sale of mortgaged property—Zur-i-peshgi mortgage—Purchase by the mortgagee*—S. 99 of the Transfer of Property Act (IV of 1882) applies to zur-i-peshgi mortgages, and a purchase of the mortgaged property by the mortgagee in execution of a decree for rent due by the mortgagor under a katkina lease of the property was held to be not merely irregular, but absolutely void. SHEODENI TEWARI *v.* RAMSARAN SINGH [I. L. R., 26 Calc., 164

MOTI RAM TEWARI *v.* RAM LAKHAN SINGH [3 C. W. N., 290

8. ——— and s 67—*Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act*—A mortgagee obtained a decree on the 15th February 1883 [illegible] 1879 [illegible] do obt[illegible] mortg[illegible] satisfaction of the debt. The judgment creditor, in [illegible]

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 89.

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTION IN EXECUTION OF DECREE.
[I. L. R., 24 Calc., 473

See DEKKAN AGRICULTURISTS ACT, s. 44.
[I. L. R., 23 Bom., 644

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 21 Calc., 818

See INTEREST—OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED—CONTRACTS . I. L. R., 17 All., 581
[I. L. R., 18 All., 316
I. L. R., 19 All., 174
I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 122.
[I. L. R., 24 Calc., 473

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 16 All., 23
I. L. R., 22 Calc., 924

See LIMITATION ACT, 1877, ART. 179—LAW APPLICABLE TO EXECUTION.
[I. L. R., 23 Bom., 644

——— s. 90.

See INTEREST — OMISSION TO STIPULATE FOR OR STIPULATED TIME HAS EXPIRED.
[I. L. R., 24 Calc., 766

See LIMITATION ACT, 1877, ART. 178.
[I. L. R., 21 All., 453

See LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES . . I. L. R., 18 All., 371

1. ——— *Decree for sale on a mortgage—Mortgaged property—Sale in execution of a decree held by a different mortgagee.*—In order to make the remedy provided by s. 90 of the Transfer of Property Act available, it is necessary that the mortgaged property should have been sold in execution of the decree held by the person applying for a further decree under s. 90. That section does not apply where the mortgaged property has been sold under a decree held by some other person. *Mahammad Akbar* v. *Munshiram, Weekly Notes, All., 1899, 208,* followed. BADRI DAS *v.* INAYET KHAN
[I. L. R., 22 All., 404

2. ——— and ss. 88 and 89—*Decree for sale of mortgaged property—Decree not satisfied by sale—Recovery of balance due on mortgage.*—The decree contemplated by s. 90 of the Transfer of Property Act (IV of 1882) can be made in the suit in which the decree for sale was passed; and it is not necessary to institute a fresh suit to obtain such decree. RAJ SINGH *v.* PAMANAND
[I. L. R., 11 All., 486

——— ss. 92 and 93.

See EXECUTION OF DECREE—DECREE TO BE EXECUTED AFTER APPEAL OR REVIEW . I. L. R., 15 Mad., 170

See CASES UNDER MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION.

See RES JUDICATA—CAUSE OF ACTION.
[I. L. R., 11 All., 386
I. L. R., 15 Mad., 366
I. L. R., 17 Mad., 96
I. L. R., 19 All., 202

——— s. 93.

See EXECUTION OF DECREE—APPLICATION FOR EXECUTION AND POWERS OF COURT.
[I. L. R., 23 Mad., 521

See MORTGAGE — REDEMPTION — MODE OF REDEMPTION AND LIABILITY TO FORECLOSURE . I. L. R., 16 Mad., 214

——— *Mortgage — Redemption — Decree for payment and redemption within six months—Application for execution of decree after six months had expired.*—S. 93 of the Transfer of Property Act (IV of 1882), under which a mortgagor, who has obtained a decree for redemption, may show cause for extending the time allowed by the decree for redemption, does not apply to decrees made before the Act was put in force. CHENNAYA *v.* MALKAPA . . . I. L. R., 20 Bom., 279

——— s. 95.

See LIMITATION ACT, 1877, ART. 148.
[I. L. R., 8 All., 295

——— s. 98.

See MORTGAGE—FORM OF MORTGAGE.
[I. L. R., 12 All., 203
I. L. R., 21 Mad., 1

——— s. 99.

See LIMITATION ACT, 1877, s. 8.
[I. L. R., 16 Mad., 436

See LIMITATION ACT, 1877, ART. 179—NATURE OF APPLICATION—IRREGULAR AND DEFECTIVE APPLICATIONS.
[I. L. R., 12 All., 64

See MORTGAGE—REDEMPTION—RIGHT OF REDEMPTION . I. L. R., 22 Bom., 624
[I. L. R., 23 Bom., 119
I. L. R., 22 Mad., 347, 372
I. L. R., 23 Mad., 377

See RES JUDICATA—COMPETENT COURT—GENERAL CASES.
[I. L. R., 16 Mad., 481

See RES JUDICATA—COMPETENT COURT—REVENUE COURTS.
[I. L. R., 18 All., 325

1. ——— *Hindu law—Personal decree against managing member of joint family not impleaded as such—Effect of sale in execution of such decree—Sale of mortgaged property in execution of decree on a money-bond for interest due on the mortgage.*—The managing member of a joint Hindu family executed in 1878 a mortgage on certain lands, the property of the family, to secure a debt

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incurred by him for family purposes, and in 1881 he together with his brother executed to the mortgagee a money bond for the interest then due on the mortgage In 1885 the mortgagee brought a suit on the money bond, and, having obtained a personal decree against the two brothers merely, brought to sale in execution part of the mortgaged property which was purchased by a third person *Held* that the sale did not convey the interest of another undivided brother who was not a party to the decree *Held* further *per* KERNAN, *J.*, that the sale in execution was invalid under the Transfer of Property Act, s 99 SATHUVAYYAN *v* MUTHUSAMI

[I. L R , 12 Mad , 325

2 — — — *Money decree "on the responsibility of" mortgaged premises—Attachment and sale of mortgaged premises—Purchase by mortgagee* —A usufructuary mortgagee left the mortgaged premises in the possession of the mortgagor *under a rent agreement* in 1878 The rent having ... mortgagor ... the arrear ... mortgagor ... its mulgeni right" in the mortgaged premises. The decree-holder attached the mortgaged premises in execution, and having brought them to sale and purchased them himself, he sued for possession *Held* that the sale was invalid under the Transfer of Property Act, s 99 DUROAYYA *v* ANANTHA

[I. L R , 14 Mad., 74

See VIGNESWARA *v* BAPAYYA

[I. L R., 16 Mad., 436

3 ——— *Usufructuary mortgage—Suit by usufructuary mortgagee for sale of equity of redemption of mortgaged property in execution of a decree for mesne profits and costs* —Certain usufructuary mortgagees, not having been put in possession of the mortgaged property by the mort ...

Najm-un-nissa, I L R , 16 All , 415, and *Jadub Lall Shaw Chowdhry v Madhub Lall Shaw Chowdhry, I. L. R., 21 Calc , 34,* referred to. MAHABIR SINGH *v* SAIRA BIBI

[I. L. R., 17 All., 520

4. ——— and s 2—*Suit to set aside sale by mortgagee prior to coming into force of the Act—Construction of Statute* —In a suit brought to set aside a sale effected by a mortgagee prior to the date when Act IV of 1882—(Transfer of Property Act) came into force,—*Held* that the Transfer of Property Act (ss 2 and 99) has no retrospective effect, so as to invalidate an order for sale which constituted a legal relation between the defendants passed before that Act came into force NARANAPPA *v*. SAMACHARLU I. L. R., 19 Mad , 382

5. ——— and s 67—*Sale of mortgaged property in execution of money-decree—Sale by mortgagee of mortgaged property to satisfy a claim not arising under the mortgage* —A mortgagee cannot sell the mortgaged property in execution of an ordinary money-decree in satisfaction of a claim not arising under the mortgage S 99 of the Transfer of Property Act limits the right of a decree holder in such a case, and provides that he shall not bring the mortgaged property to sale otherwise than by instituting a suit under s 67 of that Act. *Quære* —Whether the suit to be instituted under s. 99 is a suit on the mortgage or is one on the charge created by attachment JADUB LALL SHAW CHOWDHRY *v* MADHUB LALL SHAW CHOWDHRY

[I. L. R., 21 Calc , 34

6. ——— and s 67—*Usufructuary mortgage—Lease by mortgagee to mortgagor of mortgaged premises—Suit for recovery of rent—Attempt to sell mortgaged property in execution of money-decree for rent* —*Held* that a usufructuary mortgagee who had leased the mortgaged premises to his mortgagor could not, in execution of a simple money-decree for rent against the mortgagor, attach and sell the mortgaged premises but must bring a suit as provided by s 67 of Act IV of 1882 AZIM ULLAH *v* NAJM-UN-NISSA . I L R., 16 All., 415

7. ——— *Sale of mortgaged property—Zur-i-peshgi mortgage—Purchase by the mortgagee* —S 99 of the Transfer of Property Act (IV of 1882) applies to zur-i-peshgi mortgages, and a purchase of the mortgaged property by the mortgagee in execution of a decree for rent due by the mortgagor under a katkina lease of the property was held to be not merely irregular, but absolutely void. SHEODENI TEWARI *v* RAMSARAN SINGH

[I. L. R., 28 Calc., 164

MOTI RAM TEWARI *v* RAM LAKHAN SINGH

[3 C. W. N., 290

8 ——— and s. 67—*Application for the attachment and sale of mortgaged property in execution of a decree obtained not in accordance with the Transfer of Property Act, though suit instituted after the passing of the Act* —A mortgagee obtained a decree on the 15th February 1883 ... 1879 ... do obt- ... mortga- ... satisfa- ... execu- ... properties, and afterwards assigned over the decree, and the assignee, on the 18th August 1891, applied for the execution of the decree by attachment and sale of another of the mortgaged properties. *Held*, on the objection of the judgment-debtors, that s 99 of the Transfer of Property Act was applicable

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to the case, and that the mortgaged property could not be sold, unless a suit under s. 67 of the Act be brought, and the procedure prescribed by the Transfer of Property Act followed. The property, however, could be attached, as there is nothing in s. 99 prohibiting such attachment. CHUNDRA NATH DEY v. BURRODA SHOONDURY GHOSE

[I. L. R., 22 Calc., 813

9. ——— *Mortgage-decree—Transfer of Property Act (IV of 1882), Decree regarded as mortgage-decree under—Sale of mortgaged property in execution of decree.*—In a suit for recovery of mortgage-money by sale, brought after the Transfer of Property Act (IV of 1882) had come into force, the decree of the Court was: "That a decree be passed in favour of the plaintiffs in respect of R5,387-10-13, together with costs and interest at the rate of 6 per cent. per annum up to the date of realization, and that the mortgaged properties be made liable (*pac band kea jae*) for realization of the decretal money." *Held* that the decree was to be regarded as a mortgage-decree governed by the Transfer of Property Act, though not made in the form prescribed by that Act; and it followed that it was not open to the decree-holder to proceed against properties other than the mortgaged properties before exhausting the latter, and without obtaining an order under s. 90 of the said Act. *Jogemaya Dassi* v. *Thackomoni Dassi, I. L. R., 24 Calc., 473,* and *Fazil Howladar* v. *Krishna Bandhoo Roy, I. L. R., 25 Calc., 580,* referred to. *Chundra Nath Day* v. *Burroda Shoondury Ghose, I. L. R., 22 Calc., 813,* distinguished. LAL BEHARY SINGH v. HABIBUR RAHMAN . . . I. L. R., 26 Calc., 166

10.——— and s. 67—*Landlord becoming mortgagee to tenant—Power to sell tenure in execution of rent-decree.*—When a landlord has taken a mortgage of the holding of a tenant, he is debarred by s. 99 of the Transfer of Property Act from bringing the tenure to sale in execution of his rent-decree otherwise than by instituting a suit under s. 67 of that Act. RAMANI DASI v. SURENDRA NATH DUTT . . . . . [1 C. W. N., 80

——— s. 100.

See CO-SHARERS—GENERAL RIGHTS IN JOINT PROPERTY.

[I. L. R., 14 All., 273

See LIMITATION ACT, 1877, ART. 148.

[I. L. R., 8 All., 295

See MORTGAGE—CONSTRUCTION.

[I. L. R., 13 All., 28

See MORTGAGE—FORM OF MORTGAGE.

[I. L. R., 9 All., 158

1. ——— *Charge on immoveable property—Mortgage—Construction of document—Limitation.*—Under s. 100 of the Transfer of Property Act, for a document to create a charge on immoveable property, it must be a document that creates such charge immediately on its execution, and not operates only as a charge at some future time, such as in the event of non-payment of the money secured by it, the latter being the possibility of a charge ultimately arising on the land, and not "a charge" within the meaning of that section. *A* lent *B* R99, and *B* executed a document on the 24th July 1881, whereby he agreed to repay the amount with interest in the month of Baisakh 1289 F.S. (April 1882), and further agreed that, if he did not pay the money as stipulated, he should sell his right to certain land and that *A* should take possession thereof, and that after *A* took possession of the land no interest should be paid by him, *B*, and that *A* should pay the rent of the landlord out of the profits of the land without any objection. *A* instituted a suit on the 3rd August 1885 to recover the R99. *Held* that the document did not amount to a mortgage, nor did it create a charge under s. 100 of the Transfer of Property Act, and that the suit was barred by limitation, three years being the period applicable. MADHO MISSER v. SIDH BENAIK UPADHYA *alias* BENA UPADHYA.

[I. L. R., 14 Calc., 687

2.——— and s. 58—*Hypothecation bond, Suit on.*—The period of limitation for suits upon hypothecation-bonds which contain no power of sale, or effect no transfer of property, executed before the Transfer of Property Act came into operation, is twelve years under sch. II, art. 132, of the Limitation Act of 1877. *Aliba* v. *Nanu, I. L. R., 9 Mad. 218,* followed. *Per* MUTTUSAMI AYYAR, J.—"The transaction in suit appears to be of the kind described in s. 100 of the Transfer of Property Act, which defines how a charge is created;" but "it seems to me that the Transfer of Property Act does not invest all prior hypothecations with the rights and liabilities arising from simple mortgages, whether or not those transactions satisfy the requirements of the definition it contains of simple mortgages." RANGASAMI v. MUTTUKUMARAPPA

[I. L. R., 10 Mad., 509

3. ——— and s. 68—"*Charge*"—*Bengal Tenancy Act, s. 65.*—The provisions of s. 68 of the Transfer of Property Act are not amongst those made applicable by s. 100 of that Act to a person having a charge within the meaning of the latter section. *Semble*—The "charge" referred to in s. 65 of the Bengal Tenancy Act (VIII of 1885) is not such a "charge" as that defined by s. 100 of the Transfer of Property Act. *Lolit Mohun Roy* v. *Bindodai Dabee, I. L. R., 14 Calc., 14,* explained. FOTICK CHUNDER DEY SIRCAR v. FOLEY

[I. L. R., 15 Calc., 492

——— s. 101.

See MORTGAGE—SALE OF MORTGAGED PROPERTY—RIGHTS OF MORTGAGEES.

[I. L. R., 16 Mad., 94
I. L. R., 20 Mad., 274

——— s. 104, Rules framed under—

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—IRREGULARITY.

[I. L. R., 25 Calc., 703
4 C. W. N., 474

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

——— *Rules made by High Court under s 104* [illegible]

[illegible] of the Code of Civil Procedure as regards sales held in execution of mortgage decrees. *Kedar Nath Raut v. Kali Charan Ram, I L R, 25 Calc, 703,* explained. DAKSHINA MOHAN ROY *v.* BASUMATI DEBI . . . 4 C W.N., 474

——— s. 105

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
[I. L. R., 24 Calc., 440
2 C. W. N, 292

——— s 106

See FISHERY, RIGHT OF
[I. L R., 20 Calc, 446

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
[I. L. R, 7 All., 596, 899
I. L. R., 17 All., 45
I. L. R., 20 Bom., 759
I. L. R., 22 Bom, 754
3 C W. N, 383
4 C W. N., 572, 760

See ONUS OF PROOF—LANDLORD AND TENANT . I. L R., 13 Mad, 60

——— s. 107.

See REGISTRATION ACT, s 17, cl (*d*)
[I. L. R, 17 Mad, 275
I. L. R., 21 Mad., 109

See REGISTRATION ACT, s 18
[I. L. R, 24 Calc, 20

——— *Hât, Lease of—General Clauses Act (I of 1868), s 2, cl. 5—Immoveable property—Registration Act (III of 1877), s 17* —A suit was brought for rent of a hât on the basis of a verbal settlement for three years at an annual jumma of R3,0. The defendants denied the settlement The first Court found for the plaintiff, but on appeal an objection having been raised by the defendants that the verbal lease was illegal under the Transfer [illegible]

——— s 108

See LANDLORD AND TENANT—BUILDINGS ON LAND, RIGHT TO REMOVE AND COMPENSATION FOR IMPROVEMENTS.
[I. L. R., 22 Calc., 820

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued*

See LANDLORD AND TENANT—DAMAGE TO PREMISES LET I. L. R., 17 Mad., 98
[I. L. R., 23 Bom, 15

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
[I. L. R., 24 Calc., 440

See LANDLORD AND TENANT—TRANSFER BY TENANT I. L. R., 17 Mad., 293
[I. L. R., 22 Calc., 494
4 C. W. N., 574

See ONUS OF PROOF—LANDLORD AND TENANT . I. L. R., 13 Mad., 60

——— *Transfers before passing of Transfer of Property Act*—s 108 of the Transfer of Property Act does not apply to transfers which took place before the passing of the Act HARI NATH KARMAKAR *v.* RAJ CHANDRA KARMAKAR
[3 C. W N., 122

——— s. 111.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
[I. L. R., 7 All., 596, 899
I. L. R, 20 Bom., 759

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
[I. L. R., 20 Bom, 354
I L. R, 24 Calc., 440

See LEASE—CONSTRUCTION
[I. L. R., 17 All., 826

——— s 114.

See SMALL CAUSE COURT, PRESIDENCY TOWNS — JURISDICTION — IMMOVEABLE PROPERTY I. L R., 17 Mad., 216

——— s. 116.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO QUIT
[I. L. R., 20 Bom., 759

——— s. 117.

See BENGAL TENANCY ACT, SCH III, ART 2
[I. L R., 27 Calc, 205

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE
[I L. R., 20 Bom., 354

See LEASE—CONSTRUCTION
[I L R., 17 Mad., 98

——— s. 118

See PRE-EMPTION—CONSTRUCTION OF WAJIB-UL-URZ I. L. R., 7 All., 623

See TRANSFER OF PROPERTY
[I. L. R., 11 Mad., 459

——— *Exchange—Partition*—Some of the co-owners possessing an undivided share in several properties took by arrangement a specific property in lieu of their shares in all the properties *Held* that this transaction was not an exchange

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within the meaning of s. 118 of the Transfer of Property Act, but the completed transaction amounted to a partition which is not required by law to be effected by an instrument in writing. *Firth* v. *Osborne, L. R., 3 Ch. D., 618,* referred to. GYANNESSA v. MOBARAKANNESSA I. L. R., 25 Calc., 210 [2 C. W. N., 91

s. 119—*Exchange—Mutual covenants subsequently entered into to support title—Maxim "expressum facit cessare tacitum."*—The plaintiff and defendant effected an exchange of land; subsequently they executed to each other documents, of which that executed by the defendant recited the exchange and continued, "If any claim or dispute arises, I hereby bind myself to settle it." If I do not so get the dispute settled, I hereby bind myself to pay an amount not exceeding R4,014-8-6 at the rate of R1-4-0 per kuli of land for lands which go out of your possession. The plaintiff, alleging that he had been ousted from the land conveyed to him, now sued to recover the land which he had given in exchange. *Held* that the operation of the Transfer of Property Act, s. 119, was excluded by the express covenant in the document quoted above. SUBRAMANIA AYYAR v. SAMINATHA AYYAR [I. L. R., 21 Mad., 69

——— ss. 122, 123.

See GIFT . I. L. R., 20 All., 392

s. 123.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—ANNUITY OR PENSION. [I. L. R., 6 All., 634

See GIFT . I. L. R., 19 Mad., 433

——— *Hindu law—Gift—Delivery of possession—Immoveable and moveable property.*—Assuming that delivery of possession was essential under the Hindu law to complete a gift of immoveable property, that law has been abrogated by s. 123 of the Transfer of Property Act. The first paragraph of that section means that a gift of immoveable property can be effected by the execution of a registered instrument only, nothing more being necessary. *Semble*—The same is the case under that section with regard to moveable property, provided that a registered deed (and not the alternative mode of delivery) be adopted as the mode of transfer. DHARMODAS DAS v. NISTARINI DASI [I. L. R., 14 Calc., 446

BAI RAMBAI v. BAI MONI [I. L. R., 23 Bom., 234

——— ss. 123 and 129.

See HINDU LAW—GIFT—REQUISITES FOR GIFT . I. L. R., 16 Calc., 446
[I. L. R., 20 Calc., 464
I. L. R., 23 Bom., 234

——— s. 127.

See GIFT . I. L. R., 20 Mad., 147

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

——— s. 131.

See LAND REGISTRATION ACT, s. 78. [I. L. R., 23 Calc., 87

1. ——— *Transfer of debts—Notice of transfer—Assignment of mortgagee—Mortgagor, Liability of, to assignee of mortgagee when no notice of assignee given.*—An assignment is perfectly valid, though the notice referred to in s. 131 of the Transfer of Property Act has been given, though the title of the assignee as against third parties is not complete until such notice has been given, the object of such notice being the protection of the assignee. S. 131 of the Transfer of Property Act makes no alteration in the law as it obtained in England previous to the passing of that Act and as laid down in the cases cited in the note to *Ryall* v. *Rowles, 2 W. & T. L. C., 777,* the first portion of the section merely fixing the time when the section comes into operation and the latter providing for the protection of the debtor if he deals with the debt before that time. Where, therefore, an assignee of a mortgagee brought a suit on the mortgage against the mortgagor and the mortgagee and no notice of the assignment had been given to the mortgagor under s. 131 of the Transfer of Property Act,—*Held* that the Court was wrong in dismissing the suit merely on the ground that no notice was served, as after the suit was instituted the mortgagor became aware of the assignment, and the transfer accordingly came into operation on the date when he thus became aware of it. LALA JUGDEO SAHAI v. BRIJ BEHARI LAL . . . I. L. R., 12 Calc., 505

2. ——— *Decree—Debt.*—A decree is not a "debt" within the meaning of that word as used in s. 131 of the Transfer of Property Act. A "debt" under that section means an actionable claim, and not a claim which has already passed into a decree. AFZAL v. RAM KUMAR BHUDRA [I. L. R., 12 Calc., 610

3. ——— *Transfer of debt—No— to debtor.*—*Held* that an assignment by endorsement of a registered bond hypothecating certain crops was not void by reason that notice thereof was not proved to have been given to the obligor, inasmuch as the effects of s. 131 of the Transfer of Property Act was merely to suspend the operation of the assignment up to the time when such notice was received; that in this case the assignment would come into operation against the obligor when he became aware of it by the institution of the suit; and that, if he had prior notice and sold the property to *bonâ fide* transferees for value without notice either of the charge created by the bond or the assignment, such transferees would be protected from liability. *Lala Jugdeo Sahai* v. *Brij Behari Lal, I. L. R., 12 Calc., 505,* referred to. KALKA PRASAD v. CHANDAN SINGH . . I. L. R., 10 All., 20

4. ——— and s. 135—*Notice—Assignment of actionable claim—Rights of transferee for value.*—*A* sued for principal and interest due on a mortgage assigned to him for value by the mortgagee. No notice of the assignment

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was given to the mortgagors before the plaintiff's demand The sum sued for exceeded the amount paid by the plaintiff for the assignment and reasonable interest on it, but such amount was not paid or tendered to the plaintiff *Held* that the plaintiff was entitled to a decree for the whole amount due on the assigned mortgage SUBBAMMAL v VENKATA RAMA . . I. L. R., 10 Mad, 289

5 "*Debt*"—*Transfer of a debt—Assignment of decree—Notice of assignment—Civil Procedure Code (Act XIV of 1882), s 232*—A decree is not a "debt" within the meaning of that word as used in s 131 of the Transfer of Property Act so as to make a transfer thereof void without express notice When a decree is assigned, a notice given under s. 232 of the Civil Procedure Code is sufficient. *Afzal v Ram Kumar Dhudra, I L R, 12 Calc, 610,* followed. DAGDU v VANJI I. L. R., 24 Bom., 502

—— s 132

See RES JUDICATA—JUDGMENTS ON PRELIMINARY POINTS
[I. L. R., 12 Mad, 500

—— *Assignment of debt—Notice to debtor of assignment—Service of the summons in suit for debt—Stat 37 Vict, c 60, s 25*—Under s 132 of the Transfer of Property Act (IV of 1882), the assignee of a debt is under no obligation to give notice of the assignment to the debtor All that is required is that the debtor shall become aware of it, and it is sufficient if he becomes aware of it on being served with a writ in a suit by the assignee *Lala Jugdeo Sahai v Brij Behari Lal, I L R, 12 Calc, 505, Subbammal v Venkatarama, I L R, 10 Mad, 289,* and *Kalka Prasad v Chandan Singh, I L R, 10 All, 20* followed RAGHO v NARAYAN I L R, 21 Bom, 60

—— s. 135

See LIMITATION ACT 1877, ART 120
[I L. R., 15 Mad., 382

1 —— *Transferee of a claim for smaller value—Recovery of full amount of debt.* It is not the object of s 135 of the Transfer of Property Act absolutely to prevent a transferee, who has purchased a claim at a smaller value, from recovering the full amount of the debt due from the debtor GRISH CHANDRA v KASHISAURI DEBI
[I L. R, 13 Calc, 145

2. *Right of suit—Suit to set aside a document—Actionable claim*—The co-sharers of a Hindu family, one of whom was a minor, owned certain immoveable property in Munshigunge near Dacca. In 1873 a perpetual lease of this property executed by all the co-sharers except the minor, was granted to certain persons hereinafter called the lessees. On the minor's behalf the lease was executed by his elder brother as guardian of the minor In May 1882 the minor, who had previously attained his majority, sued the lessees and his co-sharers for a declaration of his right to, and for possession of, his share in the said property, alleging that the perpetual [illegible] binding on him On the day after the [illegible]

[illegible]

3 —— and s 52—*Sale of immoveable property by person out of possession—Actionable claim*—A transfer of ownership of im[illegible] property is not a sale of an actionable claim, [illegible] sale may not be [illegible] s of an 8 annas [illegible], sold it under a [illegible] the sale X and Y were in adverse possession of the share *Held* that the transaction was a sale under s 52 of the Transfer of Property Act to which the provisions of Ch VIII of the Act, specially those of s 135, were inapplicable *Semble*—S 135 refers to claims for money of some kind or the like, although the money claim may be a charge on immoveable property MUDUN MOHUN DUTT v FUTTAHUNNISSA
[I. L. R, 13 Calc, 297

4 —— *Transfer of a claim for smaller value—Transferee not entitled to recover more than price paid for claim* S 135 (d) of the [illegible]

the point at which judgment [illegible] vered affirming it, as the liability of the defendant has been so clearly established that judgment must be delivered against him the mischief or danger of any trafficking or speculation in litigation disappears, and the defendant can suffer no prejudice by any arrangement between the plaintiff and a third person as to who is to enjoy the fruits of the decree nor is there any probability that the process of the Court will be misused On the other hand if one who has an actionable claim against another chooses to sell it for less than its actual value the person who buys embarks more or less in a speculation which can be defeated by payment to him of the price paid for it with interest and incidental expenses The debtor's right to discharge himself by such payment is not forfeited by his putting the assignee to proof of his case in Court nor did the Legislature intend that the position of the assignee should be better after suit and decree than before. *Grish Chandra v Kashisauri Debi I L R, 13 Calc, 145* dissented from *Chedambara Chetty v Renga K M V Auchaiya Naickar, L R, 1 I A 241 13 B L R, 509,* and *Ram Coomar Coondoo v Chunder Canto Mookerjee, L R, 4 I A 23; I L R, 2 Calc, 233,* referred to. The assignee, under an instrument dated [illegible] December 1885 and in consideration of [illegible]

[illegible]

d[illegible] debt on the [illegible]
Held that the assignee's proceedings were of the

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the claim, on the ground that the assignment was an unconscionable bargain, so unfair that the Court should not enforce it If a person who has an actionable claim against another chooses to sell it cheap, that is no reason why that other is to stand cleared

hands by paying to him the price and incidental expenses of the sale with the interest on that price from the day that the plaintiff paid it to the date of its repayment to him *Jani Begam* v *Jahangir Khan, I L R, 9 All 476*, followed *Grish Chandra* v *Kashisauri Debi, I L R., 13 Calc, 145*, and *Khoshdeb Biswas* v *Satar Mondol, I L R, 15 Calc 436*, dissented from HAKIM UN NISSA *v* DEONARAIN . I. L. R., 13 All., 102

11. ——— *Actionable claim—Mortgage-bond hypothecating immoveable property*—*Per* PETHERAM, *C J.*, NORRIS, O KINEALY, and

PETHERAM, *C J*, NORRIS and GHOSE *JJ*—Where an actionable claim has been assigned, the debtor may be discharged from all liability by payment to the buyer of the price and incidental expenses of the sale, with interest on the price from the day that the buyer paid it, provided that such payment is made at any time before a judgment of a competent Court has been delivered affirming the claim, or before the claim has been made clear by evidence and is ready for judgment, but if such payment is not made before the period mentioned, the assignee is entitled

debt *Jani Begam* v. *Jahangir Khan, I L R, 9 All, 476*, and *Nilakanta* v *Krishnasami, I L R, 13 Mad, 225*, approved of *Rajendra Narain Bagchi* v *Watson & Co., I L R, 18 Calc, 610*, referred to. *Per* O'KINEALY, *J*—Cl (*d*) of s. 135 refers to circumstances arising before the transfer of the actionable claim, and cls (*a*), (*b*), and (*c*) refer to circumstances coming into existence at the time of the transfer MUCHIRAM BARIK *v* ISHAN CHUNDER CHUCKERBUTTI I. L. R., 21 Calc., 568

12. ——— *Mortgage—Actionable claim—Assignment of mortgage—Liability of mortgagor—Steps to be taken by mortgagor to obtain benefit of s 135*—A mortgage is an actionable claim under s. 135 of the Transfer of Property Act. In order to obtain the benefit of that section, the mortgagor must pay "the price and incidental expenses, etc., with interest" into Court either or before the action. *Muchiram Barik* v. *Ishan Chunder Chuckerbutti, I L R, 21 Calc, 568*, followed. Where a mortgagor some months after suit was brought tendered the amount due, on the assignment of the mortgage to the assignee, and the tender was refused and no actual payment was made into Court,—*Held* (by PETHERAM, *C.J*, NORRIS and O'KINEALY, *JJ*, affirming the judgment of HILL, *J*) that, under the circumstances, the mortgagor was not entitled to the benefit of s. 135 RUSSICK LALL PAL *v* ROMANATH SEN I. L. R., 21 Calc., 793

13 ——— *Assignment of mortgagee's rights under his mortgage Actionable claim.*—An assignment of a mortgagee's rights under a mortgage is not an assignment of an "actionable claim" within the meaning of s 135 of the Transfer of Property Act (IV of 1882) MOTI RAM *v* JETH MAL I. L. R., 16 All., 313

14. ——— *Actionable claim—Rights of usufructuary mortgagee whose mortgagor has failed to put him in possession of the mortgaged property—Assignment of mortgagee's rights*—The transfer by a usufructuary mortgagee, whose mortgagor has failed to give him possession of the mortgaged property of his rights as such mortgagee against his mortgagor, is a transfer of an actionable claim within the meaning of s. 135 of the Transfer of Property Act (IV of 1882) RANI *v* AJUDHIA PRASAD I. L. R., 16 All., 315

15 ——— *Assignment of an actionable claim—Suit by the assignee—Recovery of the full amount of debt*—*F* owed a sum of R483 to *G*, who assigned the debt to the plaintiff for R200 The plaintiff sued *F* to recover the whole amount *Held* that under s 135 of the Transfer of Property Act (IV of 1882) the plaintiff was entitled to recover the whole amount of the debt VISHNU MAHADEV SONAR *v* DAGADU I. L. R., 19 Bom., 290

16. ——— *Actionable claim—Mortgage—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses*—Where the debtor without denying the claim offers to pay the purchaser the actual price paid by him with interest and expenses of the sale and merely disputes the amount of these items—*Held* that such a case does not come under the exception in cl. (*d*) of s. 135 of the Transfer of Property Act, and the first paragraph of that section applies. *Held* also that it is not necessary to deposit the money in Court in order to gain the benefit of s. 135 of the Transfer of Property Act. DEBENDRA NATH MULLICK *v.* PULIN BEHARY MULLICK [I. L. R., 23 Calc., 715

17. ——— *Actionable claim—Tender*—When the plaintiff, as an assignee of an actionable claim, brought a suit for its enforcement without having previously given a notice to the defendants of his purchase, and on the suit being called on for hearing the latter prayed to be discharged from liability by paying the price paid by the plaintiff in purchasing the same with costs and all incidental expenses and asked for a month's time to pay the money,—*Held* that the plaintiff was entitled to a decree for the full amount of his claim, and not simply the amount

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

at which he purchased the bond in question with costs and incidental expenses, inasmuch as there was neither any payment before judgment was delivered nor was any tender of payment made at the time. PUNDIT CHARAN SIRKAR *v.* GANGADHAR DAS [2 C. W. N., 147

18. ———— *Actionable claim—Assignment of simple mortgage before due date.*—The term "actionable claim," as used in s. 135 of Act IV of 1882, means a claim in respect of which a cause of action has already matured, and which, subject to procedure, may be enforced by suit. *Held* that the assignment for value of a simple mortgage before the due date of the mortgage is not a sale of an actionable claim within the meaning of s. 135 of Act IV of 1882. *Rani* v. *Ajudhia Prasad, I. L. R., 16 All., 315,* referred to and explained. SHIB LALL *v.* AZMAT-ULLAH [I. L. R., 18 All., 265

19. ———— *Mortgage—Actionable claim—Transfer of Property Act, s. 84—Transfer of a claim for an amount less than its value—Recovery of amount actually paid with interest and incidental expenses.*—A debtor claiming the benefit of s. 135 of the Transfer of Property Act (IV of 1882) is discharged of his liability if he pays or offers to pay at any time before final judgment the amount actually paid with interest and incidental expenses. *Muchiram Barik* v. *Ishan Chandra Chuckerbutti, I. L. R., 21 Calc., 568,* followed. The amount of interest is governed by s. 84 of the Transfer of Property Act. DEBENDRA NATH MULLICK *v.* PULIN BEHARY MULLICK [I. L. R., 24 Calc., 763

20. ———— and s. 139—*Insolvent Act (Stat. 11 & 12 Vict., c. 21), s. 86—Purchaser of scheduled debts—Right of purchaser to be paid full amount of such debt.*—An insolvent, having filed his schedule in April 1881, obtained his personal discharge in September 1881, and on the same day judgment was entered up against him for the amount of his scheduled debts under s. 86 of the Insolvent Act (11 & 12 Vict., c. 21). The schedule contained the names of thirteen creditors. The insolvent, afterwards settled with four of them. The remaining nine, whose aggregate claims amounted to R1,180-7-0, sold their claims. Certain assets belonging to the insolvent's estate having subsequently come into the hands of the Official Assignee, the purchasers claimed to be paid the full amount of the scheduled debts which they had bought. It appeared that the debts in question were debts incurred on certain promissory notes passed by the insolvent. The insolvent contended that under s. 135 of the Transfer of Property Act (IV of 1882) the purchasers were only entitled to the amount which they had actually paid for the debts they had bought. *Held* that they were entitled to be paid the full amount of the scheduled debts. If the debts at the time of purchase were to be regarded as debts in respect of promissory notes, s. 139 of the Transfer of Property Act applied, and if the claim was under the judgment entered up against the insolvent, then clause (*d*) of s. 135 applied. IN THE MATTER OF RUNCHOD KHUSHAL . I. L. R., 21 Bom., 572

21. ———— *Assignment of mortgage by mortgagee—Suit by assignee—Payment into Court by defendants (representatives of mortgagor) of price paid to the assignor (mortgagee) without admitting the mortgage or assignment—Interest—Payment in grain—Damdupat.*—In a suit by the assignee of a mortgage to recover the amount due on it, the defendants (who were representatives of the mortgagor), without admitting the mortgage, or that anything was due under it, paid into Court the amount which the plaintiff had paid for the assignment with interest and expenses, but said that they did not admit the assignment to the plaintiff or the assignor's right to the mortgage, but that they were willing that the amount should be paid to the plaintiffs if he proved that he was the person entitled to recover the mortgage-debt. *Held* that the plaintiff was entitled to recover the whole amount legally due on the mortgage, and that s. 135 of the Transfer of Property Act did not apply. Payment into Court under such circumstances was only a conditional tender, and such a conditional tender is not a payment under the section. ANANDRAO BABAJI BARVE *v.* DURGABAI [I. L. R., 22 Bom., 761

22. ———— *Actionable claim—Claim affirmed by a Court—Consideration for assignment—Limitation—Construction of decree.*—*A*, as guardian of the widow and legatee of the depositor, claimed a sum of money in the hands of a Bank, to which *B* asserted an adverse claim. Pending an application by *A* for a succession certificate, *B* sued the Bank and the widow for the money and *A* was joined as a defendant. A decree was passed in 1889, by which it was ordered that the Bank should pay the money to *B* on his giving security to pay it over to *A* on his obtaining the succession certificate. *B* furnished security and received the money in 1892. *A* meanwhile had obtained the succession certificate, and in 1894 he purchased the rights of the widow who had come of age. In the same year he sued *B* for the money. *Held* that the suit was not barred by limitation, and that the plaintiff was entitled to a decree; but that he could recover only the price actually paid by him with interest and the incidental expenses and costs, as the case was not within Transfer of Property Act, s. 135 (*d*), since, on the true construction of the decree of 1889, all that had been decided was who should hold the money pending the settlement of the rights of the rival claimants. SURYANARAYANA SASTRI *v.* RAMAMURTI PANTULU [I. L. R., 21 Mad., 253

23. ———— *Actionable claim—Person claiming the benefit of s. 135 not obliged to pay before judgment the amount paid by the assignee.*—*Held* that a person who is entitled to claim the benefit of s. 135 of the Transfer of Property Act of 1882 does not lose the benefit of that section if he puts the assignee to proof of the price paid by him and waits until the amount of the price has been determined and declared by the Court. There is nothing in the

TRANSFER OF PROPERTY ACT (IV OF 1882)—*continued.*

section to preclude the debtor from securing his discharge by payment of the decree *Ram v. Ajudhia*

225 PHUL CHAND *v.* CHHOTE LAL
[I. L. R., 20 All., 327

24 ——— *Actionable claim—Sale of mortgagor's interest in mortgaged property*— ... a mortgagor of his interest in the pro...

[I. L. R., 20 All., ...

25. ——— *Sale of actionable claim—Mortgagee by assignment—Assignee of prior lien.*—The assignee of a mortgagee obtained a decree for the principal and interest due under the ... subject to a prior lien of the appellant ...

entitled to a lien for ... assignment RAMA SASTRI *v.* NARASIMHA AYYAR
[I. L. R., 22 Mad., 301

26. ——— *"Judgment of a competent Court"—"Actionable claim"—Suit by assignee of a foreign judgment—Consideration smaller than amount of judgment debt—Decree for whole amount*—The assignee of a judgment for R12,237 passed against the defendant by the Supreme Court of Mauritius sued in a Court in British India to recover the amount of the judgment with interest Defendant, amongst other defences, contended that the transfer was not supported by consideration; and the Subordinate Judge, finding as a fact that only R5 5.0 had been paid therefor, held that the foreign judgment was an actionable claim within the meaning of s 135 of the Transfer of Property Act and decreed in plaintiff's favour for that amount only with interest. On appeals being preferred to the High Court,—*Held* that the plaintiff was entitled to recover the whole amount of the judgment *Semble*—The word 'judgment' in cl. (*d*) of s. 135 of the Transfer of Property Act include a foreign judgment. VYTHILINGA PADAYACHI *v.* SITHALAM AYYAR . I. L. R., 23 Mad., 449

1. ——— ... with an ... —The ... sum of money, the ... the right to elephants caught in pits in the owner's land and the right to sue for the recovery of such elephants from any person in possession of them The plaintiff sued the defendants to recover possession of an elephant which had been trapped and was in defendant's possession at the time of the transfer to plaintiff The suit was dismissed on the ground that the plaintiff had brought an actionable claim within the meaning of s. 136 of the Transfer of Property Act, 1882 *Held* that the section was not applicable RAMAKRISHNA *v.* KUNHIKAL . I. L. R., 11 Mad., 445

2 ——— ... *claim by o*... *term*—S... provides t... justice can ... the jurisdiction of the Court in which such officer e... his functions The plaintiff, an officer ... applicable SINGARACHARLU *v.* SIVARAI
[I. L. R., 11 Mad., 498

TRANSFER OF PROPERTY ACT AMENDMENT ACT (III OF 1885), s. 3.

See VENDOR AND PURCHASER—COMPLETION OF TRANSFER.
[I. L. R., 19 Calc., 623

TRANSLATION

See COPYRIGHT I. L. R., 14 Bom., 586
[I. L. R., 19 Bom., 557

TRANSPORTATION.

See SENTENCE—TRANSPORTATION

——— Absence by reason of—

See LIMITATION ACT, 1877, s. 7
[1 B. L. R., S N., 25

TRANS SHIPMENT PERMIT.

See SEA CUSTOMS ACT, s 123
[I. L. R., 4 Bom., 447

TREASON

See WAGING WAR AGAINST THE QUEEN
[7 B L. R., 63

TREASURE TROVE.

1. ——— Beng Reg V of 1817—*Hidden treasure—Duty of finder of hidden treasure—Rights of finder, zamindar, and Government.*—Some persons, while digging a field in certain zamindari, ... containing money The under ...

TREASURE TROVE—*continued.*

not complied with by them, and on this ground the Judge held they were not entitled to it. The Government claimed the money on the ground that the provisions of the Regulation had not been complied with, and it was made over to the Collector, an appeal to the High Court being dismissed. IN RE UMA CHARAN BANERJEE . . **7 B. L. R., Ap., 3**

S. C. OMA CHURN BANERJEE *v.* COLLECTOR OF HOOGHLY . . . . . **15 W. R., 525**

2. ———— s. 6 and s. 2—*Valuable property—Ornament.*—The owner of the house where an ornament has been found concealed may, under s. 6, Regulation V of 1817, retain possession of it as a "valuable property" under s. 2, if no one else has substantiated any claim thereto. PREM MOYEE DEWAH *v.* NOBIN CHUNDER CHOWDHRY [**4 W. R., Mis., 8**

3.———— Mad. Reg. XI of 1832—*Right to idols discovered—Right of owner of property—Right of trespasser—Omission to give notice to authorities.*—Certain idols and vessels of copper were discovered accidentally by one Shaik Mira and his brother, while digging for stones, in a masonry building underneath the ground in a rather elevated part of the bed of the tank of Anandur which belongs to the zamindari of Shivaganga. No intimation of the discovery was given by the finders to any public authority, but the Subordinate Magistrate, being informed of it by the police, proceeded to the spot and recovered the idols on the third or fourth day after they were found. They were then sent by the Magistracy to the Court of the Principal Sudder Ameen of Madura to be dealt with under the provisions of Regulation XI of 1832. Proclamation inviting claimants was made and petitions asking for possession of the idols were presented by three parties—first, by the Rani of Shivaganga, on the ground that she was trustee of the devastanams on her estate, on which the idols had been found; second, by the Stanikam of a temple in the village of Anandur and third, by the finder. The Principal Sudder Ameen adjudged the idols to be the property of the Rani, and directed that they should be delivered to her. The finder appealed to the Civil Court, which reversed the decision of the Principal Sudder Ameen, and directed delivery to the appellant. Against this order the Rani appealed to the High Court on the grounds—first, that Regulation XI of 1832 only applies to cases in which the ownership of the property is undiscovered, and that, in the present case, the Rani was presumably the owner of the property found; second, that a trespasser could not benefit by the finding. *Held* that the Rani had no title to what had been hidden in former times in the soil now belonging to her; that it had been found that these idols were hidden in a stone chamber specially appropriated to that purpose, and that she could not therefore claim a title as owner. As to the objection that the finder, being a trespasser, could not benefit,—*Held* that it was unnecessary to consider this objection unless the Rani had some right or title to the treasure, the same as she had in the soil of the tank; that she had not such right, and therefore that the contention as to the right to the property found lay between the finder and the State, which had made no claim. An objection, not before taken, was allowed to be argued at the hearing, *viz.*, that the formalities prescribed by the Regulation had not been complied with. *Held* that, though immediate notice had not been given by the finder, the property was within three or four days of its discovery in the hands of the authorities, who might be said therefore to have supplied the necessary notice. KATTAMA NATCHIAR *v.* MUHAMMAD MIRA RAVUTAN . . . . . . **7 Mad., 150**

TREASURE TROVE—*concluded.*

4. ———— Treasure Trove Act (VI of 1878)—*Right of a talukhdar in Gujarat to treasure trove—Rights of Government—Criminal Procedure Code (1882), ss. 523 and 524—Property placed at the disposal of Government.*—A bag containing R248-2-0 and a gold ring was found buried in a field under circumstances which created suspicion of the commission of an offence. The District Magistrate called for claimants to come forward under s. 523 of the Code of Criminal Procedure (Act X of 1882). Thereupon the plaintiff put in his claim, alleging that, as talukhdar and owner of the soil in which the property was found, he was entitled to the property. His claim was rejected, and an order was passed under s. 524 of the Code placing the property at the disposal of Government. The talukhdar then sued the Secretary of State for India in Council to recover the property in dispute. The Joint Judge awarded the claim. *Held*, reversing the decree of the lower Court, that, in the absence of any evidence to prove the talukhdar's right to treasure trove either by a grant or prescription, the property belonged to Government, the Indian Treasure Trove Act (VI of 1878) being inapplicable, as no notice was given by the finder, nor were any proceedings taken under it. SECRETARY OF STATE FOR INDIA *v.* VAKTSANGJI MEGHRAJJI . . **I. L. R., 19 Bom., 668**

TREATIES.

1. ———— Tenure of territory in Bombay.—The nature and results of Governor Aungier's Convention stated, and the origin of "pension and tax" in Bombay traced. Treaty of the 23rd June 1661 between Charles II and the King of Portugal considered. The treaty in 1664-65 by Mr. Humphry Cook with the Viceroy of Goa was entered into without authorization by the Crown of England or the Crown of Portugal, was not ratified by either, was expressly repudiated by the former, and never was of any force. *Doe d. de Silveira v. Texeira, 2 Mor. Dig., 250,* observed upon. NAOROJI BERAMJI *v.* ROGERS . . . . **4 Bom., O. C., 1**

2. ———— Cession of Bombay and Salsette to Portuguese.—The treaty made between Sultan Bahadur of Gujarat and the King of Portugal on the cession of Bassein and its dependencies (including Bombay and Salsette) to the Portuguese referred to. SECRETARY OF STATE IN COUNCIL *v.* BOMBAY LANDING AND SHIPPING COMPANY [**5 Bom., O. C., 23**

See LOPES *v.* LOPES . **5 Bom., O. C., 172**

TREATY, CONSTRUCTION OF—

——— Money settled upon members of Royal Family of Oudh and their heirs—*Perpetual pensions by payments arranged between sovereign powers—Construction of the word "issue," as used in a treaty between them and in subsequent cor-*

in perpetuity, although a settlement of pensions in perpetuity could not, under the Mahomedan law, be validly made by a private individual, took effect as a

king, that the words "heirs" and "issue" were used as convertible or equivalent terms; and that they meant persons who would be heirs according to

cording to the letter written by the king in that year to the Government of India after her death if she should have left issue the additional pension was to be payable to such of her issue as should be also her heirs, according to the rules of the Mahomedan Law of Inheritance MARIAM BEGUM v MIRZA WAZIR BEGUM v MIRZA I. L. R., 17 Calc., 234 [L. R., 16 I. A., 175

TREES

See BOMBAY REVENUE JURISDICTION ACT, s 4 I. L. R., 18 Bom., 319

See CASES UNDER LANDLORD AND TENANT—PROPERTY IN TREES AND WOOD ON LAND

See LIMITATION ACT, 1877, s 28 (1871 s 29) I. L. R., 3 All., 435

See LIMITATION ACT, ART 144—IMMOVEABLE PROPERTY 2 Agra, 300
[4 N W, 167
I. L. R. 16 Bom., 353
I. L. R., 19 Bom., 207

See OWNERSHIP, PRESUMPTION OF
[23 W R., 405
I. L. R., 16 Bom., 547

See PRESCRIPTION—EASEMENTS—TREES
[I. L. R., 19 Bom., 120

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—MOVEABLE PROPERTY.
[I. L. R. 6 All., 564
21 W R., 394
3 Mad., 237
I. L. R., 3 All., 168

TREES—*continued*

Document giving right to cut and enjoy

See REGISTRATION ACT, 1877 s 17 cl. (d)
[I. L. R., 20 Mad., 58

——— Liability for cutting—

See MASTER AND SERVANT
[I. L. R., 23 Calc., 923

Order to cut down—

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES 5 B. L. R., 131

——— Removal of Suit for

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS N W P
[2 Agra, Part II, 183, I. L. R. 8 All., 446
I. L. R., 9 All., 35
I. L. R., 20 All., 519

See LIMITATION ACT 1877 ART 32
[I. L. R., 8 All., 446
I. L. R., 10 All., 634
I. L. R. 20 All., 519
I. L. R., 24 Calc., 160

Restriction as to felling—

See MADRAS RENT RECOVERY ACT, s 11.
[I. L. R., 15 Mad., 47

——— Right to cut—

See FOREST ACT ss 75 AND 76
[I. L. R., 18 Bom., 670
I. L. R., 23 Bom., 518

See GRANT—CONSTRUCTION OF GRANTS
[I. L. R., 23 Bom., 518

See PRESCRIPTION EASEMENTS—TREES
[I. L. R., 19 Bom., 120

1. ——— Standing timber—*Mango tree—Custom of a locality—Registration Act (XX of 1866), s 3.*—By the term "timber" is meant properly such trees only as are fit to be used in building and repairing houses A mango tree which is primarily a fruit tree might not always come within the term "standing timber" used in the definition of immoveable property in s. 3 of the Indian Registration Act (XX of 1866) but it may be classed as a timber tree where according to the custom of a locality its wood is used in building houses. KRISHNARAO v BABAJI
[I. L. R., 24 Bom., 31

2. ——— Tree-pottah—*Right to land on which trees stand—Tree pottahdars, Rights of—Held per* DAVIES and MOORE JJ affirming the judgment of BENSON J (SUBRAMANIA AYYAR J., diss) that persons holding a pottah for palmyra trees in Tinnevelly are not *ipso facto* entitled to an ordinary raiya wari pottah for the land on which the trees stand. *Per* SUBRAMANIA AYYAR, J—Land on which a man plants a palmyra tope is in his exclusive occupancy and possession as a raiyat of Government, subject to his liability to pay any assessment or assessments which the Government may from time to

TREES—*concluded.*

time be entitled to impose and subject also to all other lawful incidents attaching to a holding of that description. The rights of a tree-pottahdar and the nature of the revenue levied on such pottahdars considered. THEIVU PANDITHAN *v.* SECRETARY OF STATE FOR INDIA . . I. L. R., 21 Mad., 433

TRESPASS.

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1. GENERAL CASES	9228
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See CALCUTTA MUNICIPAL CONSOLIDATION ACT, 1888, s. 2. I. L. R., 21 Calc., 528

See CIVIL PROCEDURE CODE, 1882, s. 244—QUESTIONS IN EXECUTION OF DECREE.
[3 B. L. R., A. C., 413
12 B. L. R., 208 note

See CIVIL PROCEDURE CODE, 1882, s. 424.
[I. L. R., 24 Calc., 584

See CONVERSION I. L. R., 22 Mad., 197

See CASES UNDER CRIMINAL TRESPASS.

See DAMAGES—SUITS FOR DAMAGES—TORTS . . 8 Bom., A. C., 177
[7 N. W., 47
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I. L. R., 13 All., 98
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See DEBTOR AND CREDITOR.
[2 Ind. Jur., O. S., 7

See EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.
[3 B. L. R., A. C., 413
12 B. L. R., 208 note

See INJUNCTION—UNDER CIVIL PROCEDURE CODE . I. L. R., 22 All., 449

See MADRAS FOREST ACT, s. 21.
[I. L. R., 12 Mad., 226

See MADRAS POLICE ACT, s. 21.
[I. L. R., 17 Mad., 37

See MASTER AND SERVANT.
[2 B. L. R., A. C., 227
2 B. L. R., O. C., 140

See MISJOINDER OF PARTIES.
[I. L. R., 19 Mad., 335

See RAILWAYS ACT, 1871, s. 2.
[I. L. R., 1 Bom., 25

See RECORDER OF MOULMEIN.
[6 W. R., Civ. Ref., 4

See RECORDER OF RANGOON.
[I. L. R., 20 Calc., 689

See RIGHT OF SUIT—INJURY TO ENJOYMENT OF PROPERTY.
[I. L. R., 19 All., 153

See RIOTING . I. L. R., 6 Mad., 245
[10 C. L. R., 278
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TRESPASS—*continued.*

See SPECIAL OR SECOND APPEAL—SMALL CAUSE COURT SUITS—TRESPASS.

See WRONGFUL DISTRAINT.
[5 W. R., Act X, 67
3 B. L. R., A. C., 261

——— by cattle.

See CATTLE TRESPASS, AND CATTLE TRESPASS ACTS.

See NUISANCE—UNDER CRIMINAL PROCEDURE CODES . 2 B. L. R., A. Cr., 45
[9 B. L. R., Ap., 36

——— on burial ground.

See RELIGION, OFFENCES RELATING TO.
[I. L. R., 10 Mad., 126
I. L. R., 18 All., 395

1. GENERAL CASES.

1. ——— **Landlord and tenant**—*Damage to reversionary interests—Right of landlord to sue for damage—English law, Non-applicability of.*—Many of the tenuresi n India are in the nature of a partnership, in which he to whom the land belongs participates with the cultivators in the crop. Therefore the law of England, that a landlord who has parted with this possession to a tenant cannot sue in trespass for damage to the property, unless the wrongful act complained of imports a damage to the reversionary interests, does not apply to landlords in India. VENKATACHALAM CHETTI *v.* ANDIAPPAN AMBALAM . . . I. L. R., 2 Mad., 232

2. ——— **Wrongful distraint of crops**—*Distraint without notice—Penal Code, s. 79—Resistance to wrongful distraint.*—A zamindar was held to be justified in exercising his right of private distraint of crops, if he had served the defaulters with written notices under Act X of 1859, s. 116; and, in such a case, raiyats, who knowingly resisted the distraint, were held to be not protected by the Penal Code, s. 79. But if the zamindar's people enter upon crops with intention of distraining without notice, the raiyat-owners are justified in considering such action as trespass. QUEEN *v.* KANHAI SHAHU
[23 W. R., Cr., 40

3. ——— **Land taken by Government without formality prescribed by Beng. Reg. I of 1825**—*Right of owner to maintain suit against Government for rent.*—Lands were occupied by the Government for the purpose of making an embankment without the observance of the formality required by Regulation I of 1825. *Held* that the owner of the land was entitled to maintain a suit against Government for the rent of the land during the time he was kept out of possession. JOYNARAIN BOSE *v.* COLLECTOR OF 24-PERGUNNAHS
[Marsh., 56

COLLECTOR OF 24-PERGUNNAHS *v.* JOYNARAIN BOSE . . W. R., F. B., 18: 1 Hay, 122

4. ——— **Suit to prevent trespass**—*Suit to close doors—Cause of action—Possibility*

TRESPASS—*continued.*

1. GENERAL CASES—*continued.*

of injury.—No suit can lie to close doors opened by a person in his own wall on the ground of a possibility of his committing trespass on the land of the plaintiff, or of his having actually committed such trespass. It will only lie when the opening of the doors is in itself such an irremediable injury that the plaintiff would not be sufficiently compensated by money damages GILDON *v.* ABDUR RAHMAN KHAN . . . 3 B. L. R., A. C., 411

5. Sale for arrears of rent—*Sale under defective notice—Reversal of sale for irregularity*—*A*, a zamindar, sold the right of *B*, his patnidar, for arrears of rent under Regulation VIII of 1819 This sale was subsequently set aside at the suit of B for irregularity. *A* then sued *B* for the arrears under Act X of 1859, and *B* pleaded limitation. *Held* that *A* was not guilty of a tres- [illegible]

[2 B. L. R., P. C., 10

S. C. SURNOMOYEE *v.* SHOSHEE MOKHEE BURMONIA . . . 12 Moore's I. A., 244
[11 W. R., P. C., 5

6 *Suit for arrears of rent for a period during which zamindar had been in possession as purchaser at a sale for arrears of rent afterwards set aside.*—In a suit by a zamindar against his patnidars for arrears of patni rent for the years 1294, 1295, and part of 1296, it appeared [illegible] in possession the zamindar himself collected some of the rent The lower Court dismissed the claim for rent for the period during which the plaintiff was so in possession on the ground that he was a wrong- [illegible] *Mokhee Burmonia, 2 B L R, P C., 10: 12 Moore's I. A., 244*, the plaintiff could not be treated as a trespasser, and that he was entitled to recover the actual arrears outstanding for the period in question, but not the interest thereon. DHUNPUT SINGH *v.* SARASWATI MISRAIN . I. L. R., 19 Calc., 267

7. — — Trespass on burial ground—*Penal Code, s 297—Trespass by co-owner.*—*A, B, C*, and *D* were co-owners of a plot of land in which they were accustomed to bury their dead. *A* and *B* opened a saw pit close to the graves of *D's* relatives, but did not disturb any of the graves. *Held* that they were wrongly convicted under s. 297 of the Penal Code. IN RE MUHAMMAD HAMIN KHAN
[I. L. R., 3 Mad., 178

8. Liability for trespass by defendants not actually committing it—*Committee under Act XX of 1863—Held*, in a suit under Act XX of 1863, that where the evidence showed that certain acts of trespass by one of the defendants were for the benefit and on behalf of the members of the committee, and were afterwards adopted and taken advantage of by them when they had acquired a full knowledge of those acts, the defendants for whose benefit the acts were done were liable for the trespass. VENKATASA NAIKER *v.* SRINIVASSA CHARIYAR . . . . . . 4 Mad., 410

2 HOUSE-TRESPASS

9. — Breaking open chest in house by inmate of house—*Penal Code, s. 457*
T, being an inmate of his uncle's house, broke open a chest and took out property from it. He was convicted of an offence under s 457 of the Penal Code *Held* that he could not properly be convicted under that section QUEEN *v.* TASUDDUK HOSSEIN
[6 N. W., 301

10. — — Breaking open door in execution of decree—*Penal Code, s 456.*—Where the accused persons, execution-creditors, in company with an authorized bailiff, broke open complainant's door before sunrise with intent to distrain his property for which they were convicted on a charge of lurking house-trespass by night or house breaking by night,—*Held* that, as they were not guilty of the offence of criminal trespass, there being no finding of any such intent as is required to constitute that offence, and that as criminal trespass is an essential ingredient of either of the offences with which they were charged, the conviction must be quashed. IN THE MATTER OF JOTHARAM DAVAY
[I. L. R., 3 Mad., 30

[illegible]
[6 N. W., 307

12. Entry into house with forged warrant of arrest—*Penal Code, s. 452.*—Where *A* goes with a forged warrant of arrest into a house, and takes away one of the inmates against his will under the authority of such warrant, he is guilty of house-trespass, by putting such person in fear of wrongful restraint, under s. 452 of the Penal Code. QUEEN *v.* ACHOMOOTH SIRKAR
[12 W. R., Cr., 33

13. — — Right of wife to enter husband's house—*Wife excommunicated from caste.*

TRESPASS—*concluded.*

2. HOUSE-TRESPASS—*concluded.*

—Excommunication from caste *per se* does not deprive a Hindu wife of her right of joint enjoyment of her husand's house, so as to make her a trespasser if she enters the house to claim maintenance. QUEEN v. MARIMUTTU . . I. L. R., 4 Mad., 243

14. ———— **Entering lock-up with intent to convey food to prisoner**—*Penal Code, s. 442.*—Where a person entered into a havalat with intent to convey or attempt to convey food to a prisoner under trial, such act on his part did not amount to house-trespass within the meaning of s. 442 of the Penal Code. EMPRESS v. LALAI

[I. L. R., 2 All., 301

TRESPASSER.

See CO-SHARERS—ENJOYMENT OF JOINT PROPERTY—ERECTION ON BUILDINGS.

[I. L. R., 18 All., 361

See MESNE PROFITS—RIGHT TO, AND LIABILITY FOR I. L. R., 19 Mad., 145

See POSSESSION—NATURE OF POSSESSION.

[I. L. R., 15 Bom., 238

See TITLE—EVIDENCE AND PROOF OF TITLE.

[I. L. R., 19 Bom., 828

———— **Dispossession by**—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[7 N. W., 228, 257, 259, 318
I. L. R., 19 All., 34

See TRANSFER OF PROPERTY ACT, s. 68.

[I. L. R., 19 All., 191

———— **Effect of settlement with**—

See SERVICE TENURE.

[I. L. R., 18 Bom., 22

———— **Suit against**—

See DECREE—FORM OF DECREE—TRESPASSER . . . 4 C. W. N., 105

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N.-W. P.

[I. L. R., 1 All., 448
I. L. R., 16 All., 325
I. L. R., 19 All., 452
I. L. R., 20 All., 520

See LANDLORD AND TENANT—EJECTMENT —GENERALLY . I. L. R., 19 Bom., 138

See MESNE PROFITS—MODE OF ASSESSMENT AND CALCULATION.

[I. L. R., 1 All., 518
I. L. R., 20 All., 208

See ONUS OF PROOF—EJECTMENT.

[I. L. R., 19 Bom., 803

See RIGHT OF SUIT—CHARITIES AND TRUSTS . I. L. R., 18 Bom., 721

Suit by—

See SPECIFIC RELIEF ACT, s. 9.

[I. L. R., 15 Bom., 685

TRESPASSER—*concluded.*

See WRONGFUL POSSESSION.

[I. L. R., 4 Calc., 566

"TRIAL," COMMENCEMENT OF—

See WITNESS—CRIMINAL CASES—SUMMONING WITNESSES.

[I. L. R, 25 Calc., 863

TROVER.

See HUNDI—LIABILITY ON.

[I. L. R., 18 Bom., 570

See SMALL CAUSE COURT, PRESIDENCY TOWNS—JURISDICTION—TROVER.

[I. L. R., 12 Bom., 573

———— **Suit in**—

See HUSBAND AND WIFE.

[I. L. R., 1 Calc., 285

1. ———— **Right of stoppage in transitu** —*Contract for goods free on board—Insolvency.*— Goods contracted to be sold and delivered "free on board," to be paid for by cash or bills at the option of the purchasers, were delivered on board, and receipts taken from the mate by the lighterman employed by the sellers, who handed the same over to them. The sellers apprised the purchasers of the delivery, who elected to pay for the goods by a bill, which, the sellers having drawn, was duly accepted by the purchasers. The sellers retained the mate's receipts for the goods, but the master signed the bill of lading in the purchasers' names, who, while the bill they accepted was running, became insolvent. In such circumstances, held by the Privy Council (reversing the decision of the Supreme Court at Bombay) that trover would not lie for the goods, for that on their delivery on board the vessel they were no longer *in trasitu* so as to be stopped by the sellers; and that the retention of the receipts by the sellers was immaterial, as after their election to be paid by a bill the receipts of the mate were not essential to the transaction between the seller and purchaser. FRAMJEE COWASJEE v. THOMPSON . . . . 3 Moore's I. A., 422

2. ———— **Conversion**—*Assignment of goods in certain warehouses on advances—Seizure of goods—Advance and assignment not simultaneous—Incomplete assignment.*—A bill of sale and assignment of goods described as being in certain warehouses belonging to *A* was given by him for the loan of a sum expressed to have been paid on the day of the date thereof. Upon an action of trover brought against the assignee of *A*, who had seized the goods, it appeared in evidence that a portion only of the goods was in the warehouse specified at the date of the sale, and that no part of the loan was paid on that day, the same being discharged by instalments a few days afterwards: whereupon the Judges of the Supreme Court held that there had been no valid transfer, and consequently no conversion, and gave an interlocutory judgment in accordance with such view. *Held* by the Judicial Committee on appeal from that decision,

TROVER—*concluded*

and from an order refusing a new trial that the decis on was not justified by the evidence, and must be reversed and a new trial granted MUTTYLOLL SEAL v O DOWDA 4 Moore's I. A., 382

3 ———— **Suit to recover notes lost by gambling**—*Act XXI of 1848—Illegal consideration—Bond fide holder for value—Trust for spe*

[illegible]

pay [illegible] certain place which he could proc re at a more reasonable rate than in the Calcutta market if the *money were give i him to purchase it* If the Company s pap r was not procurable the notes were to be returned to the pla ntiff *D* di l not go to the place st pulated to purchase the Company s paper but meeting the defendant and others he went into a house hired for gambl ng and lost at cards and paid av to the defendant some of the notes he had

[illegible]

most favourable market price f r the bank or have sol l th m and given *D* the prof t *Held* th e plain

[illegible]

w re the property of the bank and remained so in *D's* hands and theref re the pla ntiff was ent tled to recover on behalf of the bank BULDEO NARAIN v SCRYMGEOUR 6 B L. R., 581

TRUST

See DEED—CONSTRUCTION
[I. L R., 20 Bom , 310

See ECCLESIASTICAL TRUST
[3 Ind. Jur , O S , 12

See ENGLISH LAW—TRUST DECLARATION OF 4 Mad , 400

See HINDU LAW—ENDOWMENT—ALIENATION OF ENDOWED PROPERTY
[I. L. R., 8 Mad., 200

See HINDU LAW—ENDOWMENT—CREATION OF ENDOWMENT
[1 Ind Jur , N S., 11
14 B L. R., Ap., 175
I. L. R., 9 Bom , 169
I. L. R. 4 Calc. 56
I. L. R., 13 Bom , ..7
I L. R., 10 All. 18
I L. R., 25 Calc , 112

TRUST—*continued*

See HINDU LAW—PARTITION—AGREEMENTS NOT TO PARTITION ETC.
[I. L R., 6 Calc , 106
I. L. R. 12 Mad., .87

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS PERPETUITIES TRUSTS BEQUESTS TO A CLASS AND REMOTENESS

See JURISDICTION—SUIT FOR LAND—TRUSTS

See CASES UNDER LIMITATION ACT, 187 , s 10.

See LIMITATION ACT 1877 ART 113 (1871 ART 113) I. L R., 2 Calc. 323

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT

See RES JUDICATA—ESTOPPEL BY JUDGMENT I. L. R , 10 All., 277
[L. R., 24 I. A., 10

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS

See WILL—CONSTRUCTION
[I. L. R., 4 Calc , 420
I. L. R., 9 Mad., 325
1 Ind. Jur , O S , 86
I. L R., 16 Mad., 424

———— **Declaration of**—

See STAMP ACT 1879 SCH I ART 36.
[I. L. R., 13 Mad., 89

———— **Deed of**—

See LIMITATION ACT 1877 s 10
[I. L. R., 20 Bom , 511

See STAMP ACT 18 9 SCH I ART 54
[I. L. R , 20 Bom., 210

———— **Disavowal of**

See LIMITATION ACT 1877 ART 144 (1871 ART 145)—ADVERSE POSSESSION
[I. L R., 1 All , 403

———— **for benefit of creditors**

See BILL OF EXCHANGE.
[I. L. R., 3 Calc., 174

See DEBTOR AND CREDITOR.
[11 Moore's I A , 317
3 Agra, 101, 321
8 Bom., A C., 216
1 Bom , .33
I. L. R., 7 Bom., 101
I L. R., 25 Calc., 643
I. L. R. 10 Bom , 1
I. L. R , 10 Bom., 12
I. L. R., .0 Mad., 91

———— **for specific purpose.**

See LIMITATION ACT 1877 s. 10 (1871 s 10) I. L. R., 4 Calc 455, 897
[13 C L. R., 370
I. L. R. 6 Mad., 403
I. L. R., 11 Bom., 470

See TROVER 6 B. L. R., 581

TRUST—*continued.*

—— **Giving power to sell land in mofussil.**

See JURISDICTION—SUITS FOR LAND—TRUSTS.

—— **Instrument of—**

See STAMP ACT, 1879, SCH. I, ART. 50.
[I. L. R., 15 Mad., 386

—— **Notice of—**

See LIMITATION ACT, 1877, ART. 1834 (1871, ART. 134). . I. L. R., 1 Bom., 269

—— **Precatory Trust—**

See WILL—CONSTRUCTION.
[I. L. R., 2 All., 55
I. L. R., 4 All., 500
L. R., 9 I. A., 70
I. L. R., 15 Mad., 448

—— **Revocation of—**

See ONUS OF PROOF—TRUST, REVOCATION OF . . . 10 B. L. R., 19
[14 Moore's I. A., 289

—— **Scheme of management for—**

See ENDOWMENT . I. L. R., 21 Calc., 556

—— **Suit relating to—**

See CASES UNDER RIGHT OF SUIT—CHARITIES AND TRUSTS.

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—TRUSTS.

—— **Suit to set aside—**

See LIMITATION ACT, 1877, ART. 120.
[I. L. R., 20 Bom., 511

1. —— **Creation of trust**—*Owner of property constituting himself trustee—Father opening an account in name of his son.*—In order that the owner of a fund may constitute himself a trustee of it, he must either expressly declare himself a trustee, or must use language which, taken in connection with his acts, shows a clear intention on his part to divest himself of all beneficial interest in it, and to exercise dominion and control over it exclusively in the character of a trustee. From the single circumstance that an account has been opened by a father in his books in the name of his son, in which money is credited to the son, no presumption can be raised in India that the father intends to create a trust, in favour of his son, of the sums appearing in the account. ASHABAI *v.* TYEB HAJI RAHIMTULLA
[I. L. R., 9 Bom., 115

2. —— *Subsequent disposition by settlor—Disposition out of income.—Held* that where a trust has been once perfectly created, although there may have been no transmutation of possession, it cannot be defeated by any subsequent act of the settlor, and apparent dispositions of portions of the property afterwards made by him to particular members of a family, the individuals constituting which have, as a class, a beneficial interest in the whole, must be regarded not as gifts to them for creations of new trusts in their favour which he had no power to make, but as the acts of a trustee, and available only to the extent of the shares to which such persons may be entitled. But this applies only to dispositions out of the principal of the fund, and not to payments made out of its income to particular members of the family for their maintenance, or other expenses, as there may be circumstances which would render it inequitable to take an account of the latter, so as to charge such persons with what they may have received beyond their respective shares. JAMSETJI JIJIBHAI *v.* SONABAI
[2 Bom., 130 : 2nd Ed., 133

3. —— *Invalid declaration of trust—Intended transfer of property—Incomplete gift—Evidence of interested parties.*—The plaintiff, *H*, was the daughter of one *K*, deceased. *K* some two years before his death in 1866 contemplated conferring a bounty to the extent of R5,000 on each of his daughters, *M* and *H*. For *M* he bought a house at Zanzibar and settled it on her by a formal deed of settlement with various limitations. For *H*, too, he at first intended to buy a house; but finding houses in Bombay were too dear, he purchased a Government promissory note of the nominal value of R5,000. The note was purchased in his own name, and a separate account of it opened in his books, headed "The account of one promissory note bearing 5 per cent. interest." This account he debited with all expenses over and above the R5,000 incurred in and about the purchase of the note, such as for premium, carriage hire, etc., charging, moreover, 9 per cent. interest on these items of debit (which interest he carried as a gain to his general interest account), and he credited the account with the interest collected on the note from time to time, allowing interest at 6 per cent. on these items of credit. He kept also a separate account of the proceeds of the note, headed "The account of interest on one promissory note for R5,000." The plaintiff stated that on the day when the note was bought her father *K* brought it and showed it to her, saying, "This is your note; take it when you want it;" and that she left it in his custody, saying, "I will take the note when my sons grow up and do business." Corroborative evidence—which, however, differed in details from, and was in some respects inconsistent with, the evidence of the plaintiff—was given by the plaintiff's son and husband, as well as by a fourth witness not interested in the case. No interest was even paid to the plaintiff by *K* himself, although he lived for two years after the purchase of the note; but after *K*'s death his son recognized some claim in the plaintiff to the income of the sum of R5,000 set apart by *K*, and he paid her sums, equivalent to the proceeds of the note, with more or less regularity down to the date of his death. The note itself, however, he sold without communicating with the plaintiff, and appropriated to himself the sum realized by the sale, although he continued the account of interest on the note, and even headed that account in *H*'s name.

TRUST—*continued*

Later still, after the death of *K's* son, his grandsons, the defendants made similar payments for some time, but irregularly, and finally they refused to pay anything further The plaintiff sued for the note or its value and for arrears of interest accrued due thereon, asserting that the evidence established a declaration of trust in respect of the note *Held* that the evidence was insufficient to establish a valid declaration of trust, for while *K's* books of account might very well be held to corroborate the testimony of a trust which was itself of a satisfactory description they were insufficient of themselves to establish such a trust, while the oral testimony—which, if taken together and accepted as reliable, might well suffice to establish the acknowledgment of a trust—contained such discrepancies and was so generally misty and uncertain in character that it ought not to be accepted unless corroborated by undisputed facts in the case incapable of being explained except on the hypothesis advanced by the plaintiff *Per* SARGENT, *C J*—The equitable doctrine of the transfer of ownership by acknowledgment of trust, when it is sought to establish it by oral evidence, requires to be applied in this country with the greatest caution, and we cannot doubt that to allow an acknowledgment of trust to be established by the evidence of interested parties speaking as to conversations which took place seventeen years ago without the corroboration derived from other evidence pointing irresistibly in the same direction would be to introduce a most dangerous mode of appreciating evidence in this country, and would offer a direct encouragement to perjury The suit dismissed, but without costs *K's* intention that *H* should have the benefit of the R5 000—to which however he had failed to give effect—being clear HIRBAI *v* JAN MAHOMED KHALAKDINA I. L. R, 7 Bom., 229

4. ———— *Gift—Requisites to complete gift—Donor constituting himself trustee for donee—Enforcement of trust by re-* . . . .

Government promissory notes which they alleged had been presented by *B* to *M* at her marriage for her sole and separate use They alleged that the said notes, then of a nominal value of R1,500 were endorsed in the name of the said *B*, and had been deposited by him for safe custody with *M's* grandfather *J* that the said *B* during his life used from time to time to receive the said notes from *J* and draw the interest thereon for *M*, that *B* died in 1864 and that after his death the defendant, who was his widow and executrix, used to draw the interest for *M* that in 1869 she obtained possession of the said notes, and had ever since continued in possession thereof informing the plaintiffs that she was duly keeping them and collecting the interest for *M* that the plaintiffs had been living with the defendant until shortly before the present suit, and having then separated from her, had called upon her to hand over the notes and the accumulated interest, which she refused to do The defendant denied that her husband *B* had ever presented *M* with Government notes for her separate use She alleged that the notes which had been deposited by *B* with *J* were her own separate property, and not *M's*; that she and her husband had dealt from time to time with them, and that no interest was ever paid to the plaintiffs, or either of them or for their benefit. She further stated that some of the notes which had been deposited with *J* had been disposed of by *B* in his lifetime with her consent that in 1869 she obtained the remaining notes from *J* and sold them, and applied the proceeds to her own benefit. At the hearing it was proved that on the occasion of the plaintiff's marriage, presents were made to *M* both by her own family and by that of the bridegroom *R* Two accounts were then opened in the books of the firm of *J N* & *Co.*, of which *M's* grandfather *J* was a partner one of which showed her acquisitions from her own family, and the other her acquisitions from the family of her husband. The latter account contained an entry (under date August 18 1) to the effect that *B*, the father-in law of *M* had bought two Government notes for R1,500 in *M's* name, and had obtained the interest on them which was duly credited to her Other documents were produced proved to be in the handwriting of *B* and *J*, in which the said Government notes were alluded to as the property of *M*, and as having been purchased with her moneys. In 1864 *B* died without having endorsed the notes over to *M* or to any one in her behalf, and they remained in his name in the hands of *J* until 1869 when the defendant got possession of them *Held* that *B* was liable to answer for the notes as a trustee, and after *B* the defendant as his executrix and representative In the documents put in evidence, *B* alluded to the notes as *M's* property His placing them as he did, with *M's* grandfather was itself an acknowledgment, according to the practice of the class to which he belonged, that the benefit was to be hers and her children's. He thus sufficiently admitted an obligation as trustee. The legal ownership was his but he had acknowledged with sufficient clearness an obligation to hold and use the ownership for the benefit of another Such a purpose clearly manifested constitutes a trust, and burdened with a trust the property passed from *B* to the defendant as his representative and could be enforced against her *Held* further that, having regard to the general practice among Parsis the conduct of *B* in relation to the notes showed that it was his intention that the property should be enjoyed in sole and separate use by *M* and her children. MERBAI *v* PEROZBAI

[I. L. R., 5 Bom., 268

5. ———————— *Parol trust—Trustee—Executor de son tort—Deviation in the case—Appeal as to costs Limitation.* One *P C* in anticipation of death handed over his property to the defendant, his brother, and verbally directed him to pay certain specified debts and to apply the surplus for the necessities and support of his family. *Held* that a good trust was created, at any rate so far as the debts were concerned. The defendant claimed to have paid to *S*, the widow of one *L*, the deceased

TRUST—*continued.*

brother of *T C*, and himself, the sum of R7,273-1 alleged to have been owing by *T C* to *L*. In a suit by the son of *T C* for an account the Assistant Registrar found (*inter aliâ*) in his report that R1,975 had been paid to *S* by the defendant, and that the balance R5,298-1 had been taken over by the defendant by arrangement with *S* (the first payment being time barred). *Held* that a good trust in favour of *S* for the whole debt due to her was created in respect of the moneys which reached the defendant's hands applicable under the terms of the mandate to him for the payment of her claim; that no question arose as to limitation; and that it was unnecessary to consider whether the defendant, if acting as an executor *de son tort*, had power to pay it though barred. *Held* also that the trust was not in the nature of a testamentary disposition, though it was created in anticipation of death, and could not after the death of *T C* be recalled by his representatives. *Peckham* v. *Taylor*, *31 Beav*, *250*, followed. *Quære*—Whether as to the application of the surplus after payment of the specified debts the defendant was in the position of an executor *de son tort*, and that practically it may in some cases be difficult to avoid the application to Hindus of the principles upon which executorship *de son tort* rests. *Jogender Narain Deb Roykut* v. *Temple*, *2 Ind. Jur.*, *N. S.*, *234*, referred to. *Semble*—That even upon the findings of the lower Court the order as to costs would have to be altered materially in favour of the defendant. SUDDASOOK KOOTARY *v.* RAMCHUNDER

[I. L. R., 17 Calc., 620

6. ———— *Trust created for specific purpose—Surplus after performance of trust.*—Where a trust had been created for specific purposes, *viz.*, the performance of religious and other duties, and the trustee had duly appointed another trustee in his place, the latter being entitled to hold the trust estate,—*Held* that a decree having been made against the trustee personally, the corpus of the trust estate could not be sold to satisfy the claim of the judgment-creditor, nor could any specific portion of the corpus of the estate be taken out of the hands of the trustee on the ground that there was, or might be, a margin of profit coming to him personally after the performance of the trusts. *Held* also that in a suit in which all the parties interested were not before the Court there could be no decision as to the extent of the trusts nor as to whether any surplus profits of the trust estate would, or would not, after the performance of the trusts, belong to the trustee personally. BISHEN CHAND BASAWAT *v.* NADIR HOSSEIN . **I. L. R., 15 Calc., 329**

[L. R., 15 I. A., 1

7. ———— *Improvements of estate—Rights of tenant for life and remainderman as to sums expended.*—A testator conveyed his property which consisted of extensive coffee estates to trustees upon trust as to part thereof for certain persons for life and then upon trust for their children absolutely. A suit having been filed for the administration of the trusts of the will, a receiver was appointed. On the application of the receiver, and with the consent of all parties, the Court sanctioned the extension of the estate. This was done by raising a loan on pledge of the profits of the estate, out of which, when realized, the loan was paid off. By the will, the trustees were empowered to raise money for the purpose of managing the estate at their absolute discretion, either by using the profits or by pledging or selling the corpus. The tenants for life claimed that the loan might be declared a charge on the estate. *Held* that the extension was within the powers of the trusetes, but that, as between the life-tenants and the remaindermen, the former were entitled to have the sums expended on the improvements charged on the corpus, they keeping down the interest. OUCHTERLONY *v.* OUCHTERLONY . **I. L. R., 11 Mad., 360**

8. ———— *Application by trustees to raise money by mortgage of trust-property—Sanction of Court.*—A testator by his will devised property in Bombay to trustees on certain religious and charitable trusts. The income of the property was more than was required for the purposes of the trust, and the trustees had a surplus of R19,000 in their hands. They were obliged to pull down a certain chawl which stood upon the land for the purpose of rebuilding upon it, and they proposed, with a view to improve the property, to erect a larger and more substantial building than the former one. They expended the surplus of R19,000 which was on their hands, but found that to complete the work a further sum of R20,000 was necessary. This they proposed to raise by mortgaging the trust-property. They calculated that the whole mortgage-debt would be paid off out of the surplus rents of the trust-property within three years. They filed this suit, praying that the Court would sanction the proposed mortgage. The Court, however, refused its sanction, and dismissed the suit. DINSHAW NOWROJI BODE *v.* NOWROJI NASARWANJI BODE

[I. L. R., 20 Bom., 46

9. ———— **Suit for declaration of trust** —*Possession of trust property—Breach of duty.*—In a suit for declaration of trust with reference to lands, it must be shown that the party against whom the trust is prayed must have obtained a more or less rightful possession of the lands, but impressed with the obligation of a trust; that in a suit such as last mentioned, it must be shown that some duty *primâ facie* fell on the defendants, of which they were committing a breach. MUZHUR HOSSAIN *v.* DINOBUNDO SEN . . **Bourke, O. C., 8 : Cor., 94**

10. ———— **Recognition of trust**—*Deed of gift, Validity of—Oudh Estates Act (I of 1869), s. 8.*—A talukhdar, deceased before annexation, had provided by will for the succession of his five widows, one at a time, to his estate, with remainder to a son of his nephew. Settlement was made with the senior widow after the mutiny, a sanad granted to her as talukhdar, with full power of alienation, and her name was afterwards entered in the lists prepared under s. 8 of the Oudh Estates Act, 1869. But certain of her acts were not explicable except on the understanding that she was abiding by the will.

TRUST—*continued*

Held in a suit by the widow next in order that such senior widow had undertaken the trust of carrying out the provisions of the will, and that a deed of gift made by her transferred only her interest, which was an estate for life. RAMANUND KUAR v. RAGHUNATH KUAR. ANUNT BAHADUR SINGH v. RAGHUNATH KUAR

[I. L. R., 8 Calc., 769: 11 C. L. R., 140
L. R., 9 I. A., 41

11. ——— Cessation of trust—*Cessation of performance by congregation of particular* ...

... form of worship, and in preference for forty years follow those of a different form of worship, there would be no one left for whom and by whom the original form of worship can be continued, the objects of the original trust cease to exist, and the church funds and property become impressed with a trust for the performance of the later form of worship. MELLUS v. VICAR APOSTOLIC OF MALABAR

[I. L. R., 2 Mad., 295

... tute proceedings to have abuses in the trust rectified, there being no officer in this country who has ...

... gives sufficient security for costs. In order that a decree for an account may be made in favour of the plaintiff in such a suit, he must allege substantially in his plaint that which must be a distinct breach of trust; it is not sufficient for him to make out a case of mere suspicion, or to rely on particular passages in the defendant's written statement. BROJOMOHUN DOSS v. HURROLOLL DOSS I. L. R., 5 Calc., 700

13. ——— Religious and charitable trust—*Mortgage of trust property—Right of trustee to impeach acts of his predecessor in office—Endowment for charitable purposes*—Property granted for religious and charitable purposes is inalienable, except under special circumstances. No person, other than the duly authorized trustee, can alienate by sale or mortgage the property of a religious trust. When a trustee does any act in breach or repudiation of the trust, such act is not binding on his successor in the trust. On the death of *D*, the hereditary trustee of a devasthan (or religious endowment), disputes arose between *G* and *C* as to the succession. *G* claimed to succeed as *D*'s adopted son. *C* denied the adoption and claimed as *D*'s heir and nearest kinsman. *C* obtained a decree against the widow of *D* for possession of the devasthan property and took possession in 1874. *G*, in the same year, obtained a decree against *D*'s widow, awarding him possession and management of the property. He sought to execute this decree, but was successfully resisted by *C*, who had already got possession under his decree. Pending this litigation, the widow of *D*, the deceased trustee, who was *de facto* manager, mortgaged two villages forming part of the devasthan property. To pay off this mortgage, *G* mortgaged the villages to the plaintiff in 1875. The mortgagee sought to take possession of the villages, but he was resisted by *C*. Thereupon *G* filed a suit, *in formâ pauperis*, against *C* to recover possession and management of the whole devasthan property. Pending the inquiry into *G*'s pauperism, both *G* and *C* referred their disputes to arbitration, and an award ...

... 1884 the plaintiff sued to enforce his mortgage lien by sale of the mortgaged villages. *Held* that the villages being trust property, it lay upon the mortgagee to prove circumstances justifying a charge on such property. *Held* also that, even assuming that the mortgage money was actually applied to the purposes of the endowment, the mortgage could not be enforced against the property as the mortgagor was not a duly authorized trustee. *Held* further that the award made between *C* and *G* was not binding on *C*'s successor in the trust, as *C* professed to act in the matter not as a trustee, but as full owner of the devasthan property and in repudiation of the trust. GANESH DHARNIDHAR MAHARAJDEV v. KESHAVRAV GOVIND KULGAVKAR I. L. R., 15 Bom., 625

14. ——— Assignment of religious trust—*Delegation of trust—Appointment by trustee of an agent for nine years*—A person hold- ...

... an instrument which provided that the plaintiff should collect the income, pay part of it to the executant of the instrument, and with the rest perform the trusts above mentioned. In a suit for rent the defendant denied the plaintiff's title, questioning the validity ...

[I. L. R., 16 Mad., 73

15. ——— Charitable trust—*Will—Deeds not carrying out will—Misapplication of funds—Mistake—Liability of trustees—Limitation Act (XV of 1877), s. 10, and sch. II, art. 120—Fraud—Accounts—Discretion of Court to order accounts—Jurisdiction of High Court where charity established by will is outside the jurisdiction—Advocate General, Right of—Decree in prior suit ...* ...

... *also*) of a half share of certain property ... known as the "... property." The ... half share belonged to two other persons, ...

TRUST—*continued.*

and *M T*. By his will the testator directed that a moiety of the rental of his half share should be spent on the sadharm (charitable or religious) endowment of a temple at Jackho in Cutch, and the other moiety thereof in establishing two sadavarats, one at Jackho and the other in Palitana. He also set apart a sum of R1,26,000, of which R1,01,000 were to be expended in building a temple at Jackho, and the balance of R25,000 in erecting a market near the temple at Jackho, or, if that was impossible, it was to be spent in Palitana. The plaint complained that of the R1,26,000 about R60,000 had been spent in buying a property in Bombay, called the "school property," for the purpose of establishing a school there, and about R50,000 had been expended in erecting a temple at Jackho, but that nothing had been done with the balance, nor had a market been established at Jackho. All that had been done there was to erect three shops which cost about R2,000. The plaintiff further stated that in 1868 *P* (defendant No. 1) had made over the "school property" and the "Bhimpura property" to three trustees on trusts not strictly in accordance with the testator's will as above set forth. Under this deed the trustees were to apply one moiety of the net rents (1) in sadavarat or alms-giving at Jackho and Palitana; (2) in feasting the caste people in Bombay and Jackho annually; (3) in the worship called satarbhadi at the derasar (temple) in Bombay and Jackho; and (4) in entertaining and clothing the gorib (poor) in Bombay and Jackho. Of the remaining moiety of the rents (5) one-half was to go to sadharm (charities) of the derasar (temple) at Jackho; and (6) the other half to charities at such places as the trustees should think fit. In the following year, *viz.*, on the 17th April 1869, *P* (defendant No. 1) and the owners of the other moiety of the "Bhimpura property" conveyed the whole of that property to trustees, who were to apply a moiety of the rents (which was to be considered as rent from *P's* share of the property) (1) in sadavarat and alms-giving at Jackho and Palitana; (2) in feasting the caste people in Bombay and Jackho annually on the anniversary of *B R's* death; (3) in the worship of the derasar called satarbhadi, and in the entertainment and clothing of the gorib (poor) in Bombay and Jackho. The deed also directed the application of the rents of the other moiety of the "Bhimpura property," part of which was to go to a temple at Tera in Cutch and part to another temple at Jackho. This later deed, it will be observed, omitted altogether trusts (5) and (6) of the earlier one of 1868 in favour of sadharm for the temple of Jackho and for sadharm generally. The trustees appointed by the two deeds were not the same, though some of the trustees of the first were also the trustees of the second. The second deed did not recite or in any way refer to the first. At the date of suit all the trustees named in the deeds were dead except the second defendant. By subsequent deeds, however, new trustees had been appointed and they were all parties to the present suit. Defendants Nos. 2, 3, 4, 5, 6, and 7 were trustees of the Bhimpura property, and defendants Nos. 8, 9, 10, and 11 of the school property. The plaint filed on the 10th March 1892, at the relation of two members of the Jain community of Cutch, prayed that the charitable trusts of the testator's will might be carried out, and sought for accounts against the widow of the testator and the trustees of both the deeds, and for a scheme, etc. *Held* that the High Court of Bombay had jurisdiction to make a decree declaring the trusts upon which the trustees of the deed of October 1868 held the property comprised in that deed and for rectifying the deed in accordance with such declaration, but that the Court could not go further in settling a scheme. *Semble*—When money is bequeathed for the purpose of founding a charity outside the jurisdiction, the Court hands the money to the trustees named by the testator, leaving it to the Courts of the country in which the charity is to be established to settle the scheme *Held* also that the suit was not barred by limitation. It was not one for rectification of the deed of 1868, but rather one against *P* (defendant No. 1) and her assigns, the trustees of the deed of 1868 and 1869, for the purpose of following the trust property in their hands and having it applied to the proper purposes of the trust, and therefore came within s. 10 of the Limitation Act (XV of 1877). Charges of fraud and dishonesty made against trustees of a charity must be established at the hearing of the case, and cannot be allowed to be reserved and proved subsequently in the course of taking accounts. Where the trust-deed of a charity, executed subsequently to the death of a testator, under whose will the charity was established, does not strictly conform to the provisions of the will, it is not the practice of the Court, when the discrepancy has been made by mistake, to visit the past consequences of the mistake upon the trustees. The plaintiff in this suit demanded an account from *P* of the Bhimpura property from the testator's death to the execution of the deed of the 13th October 1868, and of the school-house property from the date of its purchase to the same time, and also an account against the trustees of the deed of 17th April 1869, of the income of the Bhimpura property, and of its application. *Held* that accounts ought not to be required from *P*. She had made over the property in question to trustees in 1868. There was no evidence that she had ever used any of the income for her own purposes, and the presumption was that she had faithfully discharged her duty. The account was probably barred by art. 120 of the Limitation Act (XV of 1877). The trustees of the deed of 1869 had paid over the income received by them to the trustees of the earlier deed of 1868, who were entitled to receive it; and therefore no account would be decreed against them. The plaintiff further prayed for an account against the representatives of *R B*, who had been trustee of the deed of 1868, from the date of its execution to his death in 1889. Under a decree passed in a previous suit (No. 113 of 1889), dated the 10th August 1893, brought by the trustees, they had received from *R B's* estate the balance which in that suit they had claimed to be due from him to the charity. In that suit the trustees had not asked for an account against him. *Held* that the Advocate-General as plaintiff in the

TRUST—*continued.*

present suit was barred by the decree in that suit under s 43 of the Civil Procedure Code (Act XIV of 1882) The trustees, having then omitted to ask for an account, could not sue again. The Advocate-General represented the same interests as they did, and was therefore equally bound Even, however, if that were not the case, the Court in the exercise of its discretion would not direct the account asked for. ADVOCATE-GENERAL OF BOMBAY v BAI PUNJABAI . . I. L. R., 18 Bom., 551

16. — Transfer of property on trust—*Transfer of property by convict sentenced to transportation*—*B*, having been sentenced to transportation for life, presented a petition in the Revenue Court, in which, stating that he owned a certain zamindari estate, that he had been so sentenced, and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue registers, and that of *P* be recorded in its stead *Held* that the transfer of the property by *B* to *P* was in the nature of a trust. *Durga Prasad* v *Asa Ram*, *I L R*, *2 All*, *361*, referred to HAIT RAM v DURGA PRASAD I. L. R., 5 All., 609

[illegible]

right whenever he paid them a moiety of the sum which they had paid in respect of the arrears of revenue due on such share In 1843 *M* purchased such share and became its recorded proprietor In 1877 *A*, the son of *B*, sued the representative of *M* for possession of a moiety of such share, alleging, with reference to the statement recorded in the record-of-rights that such moiety had vested in *M's* assignors in trust to surrender it to *B* or his heirs on payment of a moiety of the sum they had paid on account of revenue, and paying into Court a moiety of such sum *Held* that that statement could not be regarded as evidence of the alleged trust, and that, assuming that the alleged trust existed, the suit was barred by limitation, *M* having purchased without notice of the trust and for valuable consideration. KAMAL SINGH v BATUL FATIMA

[I. L. R., 2 All., 460

18 — *Holder of missing person's estate*—*Possession*—The possession by

[illegible]

return NARAIN SAHAI v. POSCO 2 Agra, 78

19. — — — — *Absconding shareholder* *Custom for his share to be considered as held in trust for a certain time*—*Failure to reclaim share*—The plaintiffs sued to recover a share in a village on the allegation that it had been taken by the other shareholders of the village in trust for their father, according to custom, on his absconding from the village by reason of his inability to pay his quotum of Government revenue. The only evidence of the custom was a provision in a wajib-ul urz that the share of a person who absconded should be held in trust for him for twelve years only. *Held* that, as the father of the plaintiffs did not reclaim his share within twelve years, the plaintiffs' right was forfeited. NAHANA v DYA RAM . . 5 N. W., 170

20 — — — *Wajib-ul-urz*—*Absconding co-sharer*—Where a clause of the wajib-ul urz of a village stated in general terms that absconders from such village should receive back their property on their return and certain persons who absconded from such village before such wajib-ul urz was framed sued to enforce such clause against the purchaser of their property from the co-sharer who had taken possession of it on their absconding, and who was no party to such wajib-ul urz, alleging that their property had vested in such co-sharer in trust for them,—*Held* that before such co-sharer could be taken to have held their property as a trustee, there must be evidence that he accepted such trust, and this fact could not be taken as proved by the wajib-ul urz. PIAREY LAL v SALIGA

[I. L. R., 2 All., 394

21. — *Wajib-ul-urz*—*Absent shareholders*—*Held* that a village administration paper which provides for the surrender to absent shareholders on their return to the village of the lands formerly held by them does not necessarily constitute a valid trust in their favour, although it may be evidence of such a trust. Where a village administration-paper provided for the surrender to certain absent shareholders on their return to the village of the lands formerly held by them but did not contain any declaration of a trust as existing between such absent shareholders and the occupiers of their lands at the time such administration-paper was framed,—*Held* that the administration-paper could not be regarded as evidence of a pre-existing trust between such persons, nor as an admission of such a trust by such occupiers HARBHAI v GUMANI . . I. L. R., 2 All., 493

22. *Absent co-sharer*—*Wajib-ul-urz*—*S* and his brother owned an 8 annas share of a village, and *H* and *D* owned the other 8 annas share, the parties being related to each other by blood. In 1865 (Sambat 1921) at the settlement of the village, the following statement was recorded by the settlement officer in the wajib-ul urz at the instance of *H* and *D*, with whom the settlement was made, *S* and his brother being absent from the village and having been absent for some ten years: "We, *H* and *D* are equal sharers of one 8 annas and *S* and (his brother of the other 8 annas in the village according to descent: ten years ago *S* and (his brother) went away into Oudh; their present residence is not known: they have not left woman, child, or heir of any kind in the village; on that account the entire 16 annas of the village are in possession of us, *H* and *D* At the time of the preparation of the Khewat we made a gift of 4

TRUST—*continued.*

annas of our own eight annas to *P*, and have given him possession of 4 annas of the 8 annas belonging to *S* and (his brother), keeping the remaining 4 annas in our own possession: when *S* and (his brother) return to the village, we three who are in possession shall give up the 8 annas share of the aforesaid persons." In March 1880 *S* sued *P* for possession of the 4 annas mentioned in the wajib-ul-urz as having been made over to him by *H* and *D* out of the 8 annas share belonging to *S* and his brother. He based his suit upon the wajib-ul-urz, but did not expressly state that the share in suit had been entrusted to *H* and *D* on the understanding that it should be returned to him when he reclaimed it. The lower Appellate Court dismissed the suit as barred by limitation, on the ground that *P*'s possession of the share in suit became adverse in 1866 or 1867, more than twelve years before the institution of the suit, when *S*, having returned to the village, had claimed the share and *P* had refused to surrender it. On second appeal it was contended by *S* that under the terms of the wajib-ul-urz *P*'s possession was that of a trustee, and his possession could not be held to be adverse. *Per* SPANKIE, *J.*—That inasmuch as there was no direct evidence that the share in suit had been entrusted by *S* to *H* and *D* on the understanding that it should be returned to him when he reclaimed it, and as such a trust could not be implied from the terms of the wajib-ul-urz, which amounted to nothing more than an acknowledgment of *S*'s title and an offer to surrender possession when he returned, and as when he did return in 1866 or 1867 *P* refused to surrender possession, *S* was bound to have sued to recover the share in suit within twelve years from the date of such refusal, and as he had failed to do so, the suit was barred by limitation. *Per* PEARSON, *J.*—That although no mention was made in the wajib-ul-urz of such a trust as was contended for, yet the terms of that document strongly suggested the creation of such a trust. Having regard to the terms of the wajib-ul-urz, and to the fact that *S* and his brother were not strangers to *H* and *D*, nor merely co-sharers, but near blood-relations, probably residing together on the same premises and partners in agricultural labours, further inquiry should be made with the view of elucidating the nature of the acquisition of *H* and *D* of the share and of their subsequent possession. SIRDAR SAINEY *v.* PIRAN SINGH . I. L. R., 3 All., 453

23. ———— **Retirement and disability of trustees**—*Effect of, on trust.*—Where property is assigned to trustees by an insolvent trader for the purpose of having it equally distributed among his creditors, such a trust does not become inoperative by reason of the retirement of two out of three trustees, and of the inability of the third to discharge his duties properly. BAUMGARTNER *v.* STEPHENSON

[3 Agra, 321

24. ———— **Creditor's trust-fund**—*Unclaimed dividends, Suit for distribution of.*—Where a creditor's trust-deed contained no provision for redistribution of unclaimed dividends, and a suit was brought by the representatives of one of the creditors, party to the deed, for the administration and distribution of funds in the defendant's possession allotted to other creditors by way of dividends, but unclaimed by them for forty years,—*Held* that the plaintiff was not entitled to such relief. *Wilde* v. *Banning, L. R., 2 Eq., 577,* distinguished. MANICKAVELU MUDALI *v.* ARBUTHNOT & CO.

[I. L. R., 4 Mad., 404

25. ———— **Resulting trust**—*Intention of party—Implied trust, Presumption of.*—Suit brought to recover possession of a talukh, upon the alleged ground that the moneys with which the purchase was made were not the moneys of the person in whose name the property was bought, but of a lady with whom he was living as her husband, and that there was a resulting trust in her favour. The Privy Council considered that the very principle of a resulting trust was that the property had been purchased with money belonging to another, with an implied trust that it should belong to that other person to whom the money also belonged; but that, if it was the intention of the person to whom the money belonged that there should be no such trust, no such implied trust could arise by implication, and the presumption would then be met by the facts. AMEEROONNISSA KHANUM *v.* ASHRUFFOONNISSA

[17 W. R., 259: 14 Moore's I. A., 433

26. ———— ———— *Statute of Frauds—Stat. 29 Car. II, c. 3.*—The plaintiff, who was the widow of *G*, sued the defendant, the executrix of *J*, to recover a sum of R7,394-9-6, part of the purchase-money of a house which had been sold by *J* in his lifetime, and which the plaintiff alleged had been, shortly before his death, conveyed by her husband *G* to *J* in trust to sell and hold the proceeds in trust for *G*'s family. The defendant denied the trust, and insisted that *J* had purchased the house from *G* for valuable consideration. Both *J* and *G* were Parsis. *Held* that, even assuming that no consideration was given by *J* to *G* for the house, the plaintiff was not entitled to succeed. In the absence of consideration, the trust of the house, which was admittedly conveyed by *G* to *J*, would have resulted to *G*, unless, under the provisions of s. 7 of the Statute of Frauds (39 Car. II, c. 3), he (*G*) had declared in writing some other trust which was to supersede the resulting trust in his own favour. No such declaration of trust in writing was proved. If, on the other hand, the trust did result to *G*, he, no doubt, might, as equitable owner of the house, have disposed of his interest by will. If he did so, the plaintiff had not qualified herself to sue as his representative. Probate had not been obtained of the will, and, until the will was proved, it could not be said that *G* had made a particular declaration of trust by it. Nor without probate could the plaintiff take up the position of legal representative of her deceased husband entitled to enforce his rights, and, amongst others, his rights under the supposed resulting trust. Except as executrix or as administratrix, the plaintiff could not recover property or enforce rights equitably vested in her deceased husband. BAI MANECKBAI *v.* BAI MERBAI

[I. L. R., 6 Bom., 363

TRUST—*concluded*

27 ——— Breach of trust—*Parties*—

parties concerned before it Nor will the Court pass an order which might in any way tend to be construed as an assent to a breach of trust already committed even though the breach may have been beneficial to the trust estate BARRY v STEEL

[1 C L R., 80

28 ——— Revocation of trust—*Voluntary settlement*—*A*, being at the time unmarried executed a voluntary settlement by which he created trusts for himself for life and after his death for his issue and widow (if any) with ultimate trusts over The deed contained a proviso empowering *A* at any time, with the consent of the trustee to revoke the trusts and to declare any new or other trusts *A*

trustees refused to hand over the trust property and *A* thereupon instituted a suit to have the trust set aside His wife was a minor and there was no issue of the marriage *Held* that although there might be cases in which where no other person but the settlor was interested the deed might be regarded as a mere direction as to the manner in which the settlor's property should be applied for his benefit and as such revocable by the settlor yet that in the present case there being an infant beneficiary, the deed could not be revoked. GOLAM YASSIN v OFFICIAL TRUSTEE OF BENGAL

[I. L. R , 8 Calc., 887

TRUST PROPERTY.

See COURT FEES ACT, 1870 s. 19D
[I. L. R., 23 Calc , 980

See COURT FEES ACT 1870 SCH I, ART 11 . 6 B L R., Ap , 138
[11 B L R , Ap , 39
7 B L R., 57
14 B L R , 184
I. L R , 20 Calc., 575

See HINDU LAW—PARTITION—PROPERTY LIABLE OR NOT TO PARTITION
[I L. R , 10 All , 428

TRUSTEE.

See COSTS—SPECIAL CASES—TRUSTEES
[13 B. L. R., 383
I. L. R., 11 Calc., 628

See COSTS—TAXATION OF COSTS
[I. L. R., 18 Bom , 189
I L. R., 20 Bom , 301

See EXECUTOR I. L R., 2 Bom , 388

See HINDU LAW—ENDOWMENT—SUCCESSION IN MANAGEMENT 5 B L. R., 181
[I. L. R., 7 Mad., 199

TRUSTEE—*continued*

See HINDU LAW—ENDOWMENT—TRANSFER OF RIGHT OF WORSHIP
[3 C. L R., 112

See INSOLVENT ACT s 40
[I. L. R., 3 All , 799

See CASES UNDER LIMITATION ACT 1877, s. 10 (1871 s. 10 1859 s 2)

See MAHOMEDAN LAW—ENDOWMENT
[I. L. R., 18 Bom , 401

See MALABAR LAW—JOINT FAMILY
[I. L R., 2 Mad., 328
I. L. R , 1 Mad., 153

See OUDH ESTATES ACT
[I L R , 3 Calc , 532, 645
L R , 4 I. A., 178
I L. R., 26 Calc , 879

See PARTIES—PARTIES TO SUITS—DEBTOR AND CREDITOR SUITS BETWEEN
[3 Agra, 104
I. L. R , 3 All., 799

See CASES UNDER TRUST

See CASES UNDER TRUSTS ACT

See VENDOR AND PURCHASER—VENDOR RIGHTS AND LIABILITIES OF
[7 B L. R., 113

See WILL—CONSTRUCTION
[4 B. L. R., O C , 53
I L. R., 3 Calc , 45
I L. R , 5 Calc , 228

——— Appointment of—

See ACT XX OF 1863
[I. L. R., 3 Mad., 101
I. L. R., 17 Mad , 213
I. L. R., 19 Mad., 285

——— Appointment of, Prayer for—

See VALUATION OF SUIT—SUITS.
[I. L. R., 19 All., 60

——— Assignment of property to—

See DEBTOR AND CREDITOR.
[3 Agra, 104
I. L. R., 10 Bom., 13

——— Commission allowed to—

See WILL—CONSTRUCTION
[I. L. R., 24 Calc , 44

——— Constructive—

See ENDOWMENT
[I. L R., 23 Bom., 659

See INSOLVENCY—ORDER AND DISPOSITION . I. L. R., 3 Bom., 542

——— Distinction between trustee and director

See COMPANY—POWERS DUTIES, AND LIABILITIES OF DIRECTORS.
[6 B L. R., 278

TRUSTEE—*continued.*

——— Nomination of—

See ENDOWMENT I. L. R., 18 All., 227

——— of temple.

See CASES UNDER ACT XX OF 1863.

——— of temple, Breach of trust by—

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION.
[I. L. R., 1 Mad., 55

——— Right of, to sue.

See CERTIFICATE OF ADMINISTRATION—RIGHT TO SUE OR EXECUTE DECREE WITHOUT CERTIFICATE.
[I. L. R., 20 Mad., 162
L. R., 24 I. A., 73

See DEBTOR AND CREDITOR.
[I. L. R., 20 Mad., 91

——— Suit by—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS . I. L. R., 1 Bom., 269

——— Suit by, to eject trespasser.

See RIGHT OF SUIT — CHARITIES AND TRUSTS . I. L. R., 18 Bom., 721

——— Suit for removal of—

See ACT XX OF 1863, s. 14.
[I. L. R., 2 Mad., 197
I. L. R., 19 All., 104

See ENDOWMENT I. L. R., 18 All., 227
[I. L. R., 21 Bom., 556
I. L. R., 23 Bom., 659

See LIMITATION ACT, 1877, ART. 134.
[I. L. R., 24 Calc., 418

See CASES UNDER RIGHT OF SUIT — CHARITIES AND TRUSTS.

See VALUATION OF SUIT—SUITS.
[I. L. R., 19 All., 104

1. ——— Relinquishment by one trustee—*Effect of relinquishment.*—In a contest between three trustees or managers of an endowment, each entitled to a third share in the profits of the property, if one of them withdraws from the contest, his share is held to have been relinquished in favour of the remaining partners, and to have merged in the general account to be rendered by the trustees or managers. BUZL RUHIM *v.* LUTAFUT HOSSEIN. KHODEJOONNISSA BIBEE *v.* LUTAFUT HOSSEIN
[W. R., 1864, 171

2. ——— Breach of trustees' duty—*Mixing trust funds with money of trustees—Commission on trust moneys.*—It is a grave breach of duty in trustees, or administrators taking out letters of administration, to estates in this country under powers of attorney from executors or next of kin abroad, to mix the incomes raised by them from trust properties, or the funds of the estate, in one common fund with their own moneys, and such a course of dealing may expose the trustees or administrators to criminal as well as civil liabilities. IN THE MATTER OF THE PETITION OF COWIE
[I. L. R., 6 Calc., 70: 7 C. L. R., 19

3. ——— Appointment of new trustees—*Probate—Executors—Executors alienating property of their testator's estate before obtaining probate—Title of alienees to such property—Right of holder of property to vote at election of trustee before obtaining probate—Trustee elected by debenture-holders—Meeting of debenture-holders to elect a trustee—Exclusion from meeting of holders of debentures obtained from executors before probate—Validity of election of trustee elected at meeting from which such debenture-holders were excluded.*—In order to secure certain money which it had borrowed by the issue of debentures, the *D* Company on the 23rd November 1883 conveyed certain lands, etc., to three trustees, *K*, *G*, and *D*, by way of mortgage. With regard to the appointment of new trustees in case any trustee should die, etc., the indenture of mortgage provided that, in certain events, the surviving or continuing trustees might convene a meeting of the debenture-holders for the purpose of nominating a new trustee; and that at such meeting the election of such new trustee should be decided by a majority of votes of the debenture-holders present in person, each party having only one vote, and in case of an equality of votes, then the chairman of the meeting should have a casting vote. *K*, one of the trustees appointed under the deed, died on the 9th February 1886, leaving a will whereby he appointed three executors. At the time of his death *K* was the holder of one moiety of the debentures, *viz.*, 1,400 debentures of the value of R7,00,000. The two remaining trustees, *G* and *D*, called a meeting of the debenture-holders for the 27th February 1886 to elect a trustee. Previously to the meeting and for the purpose of having the large interests of *K*'s estate adequately represented, the executors of *K* distributed some of the debentures in their hands belonging to *K*'s estate, among nominees *for the purpose of* voting at the meeting; and they also sold some of the debentures. Among the persons to whom debentures were sold were the first three plaintiffs. Pursuant to the notice convening the meeting, the plaintiffs and other persons, to whom debentures belonging to the estate of *K* had been given or sold, presented themselves and claimed to attend the meeting; but none of them, except the three executors (plaintiffs 4, 5, and 6) of *K*, were allowed to attend, and they were admitted only in their capacity as executors. Defendant No. 1 was chairman of the meeting, and he ruled that the three executors had a joint right, in their capacity as executors, to give one vote upon any proposition that might be submitted to the meeting. At the meeting it was proposed that the holders of the debentures, who claimed admission to the meeting, should be permitted to attend. The chairman ruled the motion irrelevant, and would not allow it to be put. The executors therefore withdrew from the meeting. After they had withdrawn, the third defendant, *P*, was elected a trustee. At the date of

TRUSTEE—*continued.*

the meeting the executors had not obtained probate of *A's* will. On behalf of the defendants it was contended that *P's* election was valid, and that the persons to whom the executors had given or sold debentures belonging to *K's* estate had been properly excluded from the meeting of the 27th February, inasmuch as the executors had not at that time obtained probate, and consequently the title of their alienees to the debentures was still incomplete *Held* that *P* (defendant No 3) had not been validly appointed a trustee to the indenture of the 23rd November 1883 Under that indenture, debenture-holders had the right to vote, and the debentures were payable to bearer The fact that the executors had not at the date of the meeting obtained probate did not affect the rights of those to whom they had given or sold debentures, and such persons had consequently been improperly excluded from the meeting. MATHURADAS LOWJI *v.* GOCULDAS MADHOWJI

[I. L. R., 10 Bom., 468

4. ——— **Breach of trust**—*Liability of passive trustee*—A trustee who, having accepted a trust, remains passive and takes no steps to see the trust carried into execution, is liable for losses arising from the breach of trust of his co-trustee BAI JADAV *v.* TRIBHUVANDAS JAGJIVANDAS

[9 Bom., 333

5. ——— **Fiduciary relationship**—*Assignment by married woman*—*L. M* died in 1856, having bequeathed certain personal property to *J S*, who then and at the time of the subsequently-mentioned suit was a married woman, and who executed a power of attorney, authorizing *O G & Co.* to receive payment of the legacy and to execute a settlement of a portion of the same according to articles contained in the power This settlement was made, and under it a portion of the legacy was assigned to trustees, who did not execute the deed or undertake the trust, and no other trustee was substituted for them. *O G & Co* at various times advanced money to *J S*, and in acknowledgment received promissory notes from her for a portion of such advances, and in a suit by *O G & Co.* to recover the amount of these advances, it was held that *O G & Co*, standing in a fiduciary relation to *J S*, before they could avail themselves of her acts, must show that she did them with a full knowledge of the circumstances of the case and of her own position with regard to it SMITH *v.* STEWART

[Bourke, O. C., 283

6 ——— **Cause of action**—*Adverse possession*—*Limitation*—When property is placed in the hands of another by way of trust, no cause of action arises to the owner until there has been a demand by the owner for the restoration of the property and a refusal by the trustee to give up the property The period of limitation begins to run from the date of such refusal or distinct assertion of adverse right, and not from the date the trustee enters into possession RAKHALDAS MADAK *v.* MADHUSUDHAN MADAK

[3 B. L. R., A. C., 409: 12 W. R., 310

TRUSTEE—*concluded.*

7. ——— **Suit to set aside alienations by trustee**—*Bonâ fide purchasers*—A suit brought by a *cestui que* trust to set aside as fraudulent certain alienations made by the trustee was dismissed by the lower Appellate Court as barred by limitation, merely on the ground that more than twelve years had, at the commencement of the suit, elapsed since the execution of such deeds of alienation *Held* (1) that this was not sufficient, and that the Court should have tried whether the purchasers were cognizant at the time of their purchase of a subsisting trust affecting the property, for if so, they would have taken it subject to the trust, and would stand in the shoes of the original trustee and would not be *bonâ fide* purchasers from trustees entitled to the benefit of the law of limitation; (2) that if the trustee had power to make valid grants the grantees would have a perfectly good title, if they took for valuable consideration without notice of the trust. LUTEEFUN *v.* BEGO JAN. BEGO JAN *v.* CHERAG ALI

[5 W. R., 120

8. ——— **Suit for mesne profits where estates had been under care of Court of Wards**—*Cause of action*—*Fiduciary relationship*—Plaintiff, the zamindar of Shivaganga, sued to recover two villages which she alleged formed part of the Shivaganga zamindari The villages originally belonged to *P*, mother of the present defendant, *B*, the ex zamindar of Shivaganga. In 1856 they were purchased by the Court of Wards on behalf of *B*, who was then a minor, with part of the rents and profits of the zamindari, and in 1860 were given by him to his mother In 1864 *B* was ousted by a decree of the Privy Council, and became liable to the present plaintiff for the mesne profits of the zamindari In the account taken of mesne profits due, the amount expended on the purchase of these villages was excluded by plaintiff's consent from the sum debited to the ex zamindar Plaintiff now sued *P*, and, she dying, the suit was continued against *B* as her representative *Held* that there being in the decree of the Privy Council nothing directly giving a right to maintain the suit, there was but one ground upon which the suit could be supposed to lie, namely, the existence of the relation of trustee and beneficiary between the Collector and the plaintiff at the time of the purchase. *Held* also that such relation did not exist KATTAMA NACHIAR *v.* DORASINGATEVAR

6 Mad., 293

TRUSTEE ACT.

——— **(XXIV of 1841)**—*Application for appointment of new trustees* Trustees were appointed for a company in 1845, and the partnership was to last twenty years, which expired on December 31st, 1864 The shareholders thereupon appointed *S*, a new trustee, to sell the business, and he sold it to *R*. The old trustees had left the country. In an application, with the consent of all parties, under Act XXIV of 1841, that *S* might sign the deed of transfer, the Court held that it was necessary to show that the old trustees had no lien on any other property in the concern before the order asked for could

TRUSTEE ACT—*continued.*

be made. IN THE MATTER OF FORT GLOUCESTER MILLS CO. . . . Bourke, O. C., 260

——— (XXVII of 1866), s. 3—*Hindu trusts —Equitable jurisdiction of High Court—Appointment of new trustee—Supreme Court Charter, 1823.* —The High Court may exercise the summary powers conferred upon it by the Trustee Act (XXVII of 1866) in the case of Hindu trusts. S. 3 of the Trustee Act, which provides that the power and authority given by the Act to the High Court shall be exercised only " in cases to which English law is applicable," cannot be intended to limit the operation of the Act only to cases to which, in their whole extent, the law prevailing in England applies without qualification or reserve, as this would virtually exclude the Act in any case on which an Act of the Indian Legislature has any bearing. The cases referred to in the section must be cases to which English law is in some measure applicable, but in what measure is not indicated in the Act. English law must be regarded as applicable in the sense intended if the principles recognized by the English Equity Courts are applicable. At the date of the grant of the Charter to the Supreme Court of Bombay in the year 1823, English equity had become a system which would deal with a body of *quasi*-common law in a scientific manner and in obedience to known and uniform rules. When it applied its method to the determination or the constitution of a right, even based on the Hindu or Mahomedan law, it administered English law. In this sense " English law was applicable " at the date of the passing of the Trustee Act of 1866 to all cases in which peculiarly equitable doctrines had obtained recognition in the relations between the native inhabitants of Bombay. Those doctrines could not be employed to subvert the native substantive laws, but they afforded a means of ameliorating them by a system of rules borrowed from the English Court of Equity. Trusts are recognized in the Hindu as well as in the English system of law. But while the substantive Hindu law insists strongly on the suppression of fraud and the fulfilment of promises, it fails to furnish the detailed rules by which effect is to be given to its principles in cases of trust. If the Court is called on to give effect to a trust in any given case, it looks to the Hindu law of property to determine the estate of the trustee, but with reference to the duties of trustee and the rights of beneficiaries it is governed by the rules of English equity. There are no others that it can apply. In meeting an exigency, or in taking cognizance of a form of right not directly provided for in the Shastras, the Court, in exercising its jurisdiction under s. 41 of the Charter of 1823, may apply Hindu law. But, taking Hindu law as one of its data, it applies " English law " also in the form of equity to all or nearly all the questions that arise. IN RE KAHANDAS NARRANDAS [I. L. R., 5 Bom., 154

——— ss. 20 and 32—*Appointment of person to convey property on behalf of persons out of the jurisdiction and under other disabilities.*—Where property has been, by an order of Court, directed to be sold, and where some of the parties in-

TRUSTEE ACT—*concluded.*

terested in such property are either out of the jurisdiction, married women, or minors, and the place of abode of others of them is unknown, the Court will, on petition, under the Trustee Act, appoint a person to convey the interest of such persons to any purchaser, notwithstanding that, at the time the order is applied for, no contract for the sale of the property has been entered into. But the Court cannot make such an order with respect to the interest of a party who has not been served, and who has not entered appearance. LACKERSTEEN *v.* ROSTAN [I. L. R., 7 Calc., 32

——— s. 35—*Application for removal of trustee—Ground for removal—Stat. 13 & 14 Vict., c. 60, s. 32.*—Where a petition was presented to the High Court praying for the removal, under s. 35, Act XXVII of 1866, of certain trustees of a will, on the grounds *inter alia*, of misappropriation, waste, and breach of trust, and for the appointment of new ones,—*Held* that the matters alleged were much too grave to be disposed of on a mere application, and that, as the respondents opposed the appointment of new trustees, the petitioners should institute a regular suit. Act XXVII of 1866, s. 35, is analogous to 13 & 14 Vict., c. 60, s. 32. The Courts in this country ought, in analogy to the rulings of the English Court of Chancery, to refuse jurisdiction under this section on a mere application alleging misconduct or any other cause, when the trustees whom it is sought to remove are willing to act and refer the applicant to a suit. IN THE GOODS OF POWELL [6 N. W., 54

TRUSTEES AND MORTGAGEES ACT.

——— (XXVIII of 1866), s. 43—*Administrator-General—Taking opinion of Court on question respecting the administration—Question affecting rights of parties inter se—Refusal of Court to express opinion.*—The Administrator-General of Bombay, having taken out letters of administration (having effect throughout the Bombay Presidency) to the estate of one *A B*, deceased, and having a balance in his hands to the credit of the said estate after having fully administered the same, was applied to by *G B*, the brother of the said *A B*, deceased, who had taken out letters of administration in England to the estate of his deceased brother, to hand over to him, the said *G B*, the balance in question,—the said *G B* claiming to be the administrator of the domicile of the deceased, and, as such, to be entitled to all the personal assets of his estate wheresoever situate. Being in doubt as to whether he might safely accede to the request, the Administrator-General of Bombay, by petition under s. 43 of the Trustees and Mortgagees Act, XXVIII of 1866, submitted the question to the High Court for its opinion, advice, and direction. *Held* that the question being one of considerable difficulty and importance, and involving, moreover, in its decision questions which might seriously affect the rights of parties *inter se*, it was not a question such as was contemplated by s. 43 of the Trustees and Mortgagees Act, XXVIII of 1866, nor one upon which the Court ought to give any

TRUSTEES AND MORTGAGEES ACT —*concluded.*

opinion merely on an *ex-parte* petition of this character IN RE THE GOODS OF BRERETON IN THE MATTER OF THE TRUSTEES AND MORTGAGEES ACT, 1866 I. L. R., 7 Bom., 381

son's widow, took out letters of administration with the will annexed, to the estate of *J S*, still unadminis-

that a sum of R12,600 was urgently required for certain purposes connected with the said charity, and that she had agreed, in September 1887 with one *R B*, that he should advance the said sum to her to be expended as aforesaid, and that she should grant to him a lease of the said land for 99 years, with a proviso for renewal, at a rent of R350 per mensem In October 1887, however, her adopted son served her with a notice to desist from granting the said lease. She therefore presented this petition to the Court

the premises as the Court might think fit. *Held* that under the section the Court had no power to sanction the proposed lease or to advise as to whether the petitioner had power to grant it The Court will not, under this section, advise trustees as to disputed points of law or fact, but will do so only as to undisputed matters of management, such as questions of advancement maintenance, change of investment, sale of a house, compromises taking proceedings etc *Held* also that, as a matter of general principle, the trustee of the property in question could make a lease thereof for the benefit of the trust or raise money by way of charge for the purposes of necessary repairs and maintenance; but with regard to the details of amount or as to the work to be done, the Court refused to give any opinion IN RE LAKSHMIBAI I. L. R., 12 Bom., 638

TRUSTS ACT (II OF 1882)

——— s 34—*Application for directions by trustees of charitable institution—Questions of detail and difficulty—Procedure*—The management of the Dowson charities is vested in a committee of management who are empowered under the trust deed to require the trustees of the funds of the charities to invest the trust funds in excess of two lakhs of rupees in the purchase or building of any additional land, building, and premises." Certain buildings having been erected under these provisions of the trust deed, were now stated to be in urgent want of repair The current income of the charities was not sufficient to meet the cost of carrying out the repairs, and the committee of management and the trustees were agreed that a sum of R8 700 in the hands of the latter (in excess of two lakhs of rupees) should be employed in carrying out this work. The trustees now applied to the High Court under the Trusts Act, s. 34, for its opinion on the question whether this should be done. *Held* that the question was not one with which the Court could deal under

[I. L. R., 18 Mad., 433

——— s. 49.

See ACT XX OF 1863.

[I. L. R., 17 Mad., 212

——— ss. 55, 60, 61.

See APPEAL—DECREES.

[I. L. R., 11 All., 131

——— s 56

See PARTIES—PARTIES TO SUITS—TRUSTS SUITS RELATING TO

[I. L. R., 23 Mad., 239

——— ss 63 and 64—*Trust not established*—A claim made for a share of property by inheritance from a deceased relation who had been in joint possession of it with the defendant was met by the defence that the estate had been jointly held for religious and charitable purposes under a will the deceased having had no beneficial or heritable interest The defendant alleged that the original owner of the property had bequeathed the property in trust for these purposes The claimant alleged a *revocation of the will*, and denied that *there was such a trust.* The judgment of the High Court decreeing the claim observed that, even assuming that there had been a trust under the will recognized by the deceased and the defendant the property which had come into their possession had been by them appropriated from the first to their own purposes, and had been so long held by them adversely to the trust title that the defendant could not now allege that there was no beneficial interest transmissible by inheritance Upon this the Judicial Committee pointed out that no trustee could have actually acquired a title by such an appropriation against the trust In the Trusts Act, 1882, ss. 63 and 64. They added that at the same time, the judgment of the High Court had come to the right conclusion, for the will and the trust alleged had not been established HITTO KUNWAR v KASHO PRASAD MISR . I. L. R., 19 All., 277

[L. R., 24 I. A., 10

1 C. W. N., 265

TRUSTS ACT (II OF 1882)—*concluded.*

——— s. 74.

See Appeal—Decrees.
[I. L. R., 19 All., 131

——— ss. 82, 88.

See Benami Transaction — Certified Purchaser — Civil Procedure Code, s. 317 . I. L. R., 22 All., 434

——— s. 88.

See Mortgage—Redemption — Right of Redemption I. L. R., 23 Mad., 377

——— s. 91.

See Vendor and Purchaser—Completion of Transfer.
[I. L. R., 24 Bom., 400

See Vendor and Purchaser—Invalid Sales . . I. L. R., 18 Mad., 43

——— ss. 91, 95.

See Injunction—Special Cases—Execution of Decree.
[I. L. R., 21 Mad., 353

TURN OF WORSHIP OF IDOL.

——— Right to—

See Damages — Suits for Damages—Torts . I. L. R., 3 Calc., 390

See Limitation Act, 1877, art. 131 (1871, art. 131) . I. L. R., 4 Calc., 683
[I. L. R., 8 Calc., 807
6 B. L. R., 352: 15 W. R., 29

U

UGANDA, CONSULAR COURT OF—

See Jurisdiction of Criminal Court—Gener Jurisdiction.
[I. L. R., 22 Bom., 54

UMPIRE.

See Cases under Arbitration—Appointment of Arbitrators and Umpires.

UNCHASTITY.

See Hindu Law —Adoption—Who may or may not Adopt . 5 B. L. R., 362
[I. L. R., 5 Mad., 358
I. L. R., 9 Bom., 94

See Cases under Hindu Law—Inheritance—Divesting of, Exclusion from, and Forfeiture of, Inheritance —Unchastity.

UNCHASTITY—*concluded.*

See Hindu Law—Maintenance—Right to Maintenance—Widow.
[12 B. L. R., 238
L. R., I. A., Sup. Vol., 203
I. L. R., 1 Bom., 559
I. L. R., 7 Bom., 84
I. L. R., 9 Bom., 108
I. L. R., 15 All., 382
I. L. R., 17 Mad., 392

See Hindu Law—Maintenance—Right to Maintenance—Wife 1 Mad., 372
[2 Mad., 337
8 Mad., 144
I. L. R., 19 Mad., 6

See Hindu Law—Stridhan—Effect of Unchastity : I. L. R., 1 All., 46

See Cases under Hindu Law—Widow—Disqualifications—Unchastity.

UNCOVENANTED SERVICE FAMILY PENSION FUND.

See Mutual Benefit Society.
[I. L. R., 7 Calc., 1
I. L. R., 22 Bom., 451

——— Entrance Certificate of—

See Stamp Act, 1879, s. 3, sub-s. 15.
[I. L. R., 19 Calc., 499

UNDERTAKING NOT TO SUE.

See Arrest—Civil Arrest.
[I. L. R., 1 Calc., 78

See Warrant of Arrest — Criminal Cases . 2 B. L. R., A. Cr., 17

UNDER-TENURE.

See Cases under Jurisdiction of Civil Court — Revenue Courts — Orders of Revenue Courts.

See Cases under Sale for Arrears of Rent—Incumbrances.

See Cases under Sale for Arrears of Rent — Portion of Under-tenure, Sale of.

——— Avoidance of—

See Cases under Sale for Arrears of Rent—Incumbrances.

——— Suit to cancel—

See Limitation Act, 1877, art. 121 (1871, art. 119) I. L. R., 4 Calc., 860
[I. L. R., 25 Calc., 167

UNDERWRITER.

See INSURANCE—MARINE INSURANCE.
[I. L. R., 2 Bom., 550
12 Bom., 23
3 Bom., A. C., 1
Cor., 2: Hyde, 107

UNDUE INFLUENCE.

See ACQUIESCENCE.
[I. L. R., 17 Mad., 275

See CHAMPERTY . 13 B. L. R., 509
[L. R., 1 I. A., 241

See CONTRACT — ALTERATION OF CONTRACTS — ALTERATION BY COURT (INEQUITABLE CONTRACTS).
[L. R., 4 I. A., 101
I. L. R., 10 All., 535
I. L. R., 22 All., 224

See DEED—CANCELLATION.
[I. L. R., 10 All., 535

See HINDU LAW—ADOPTION—WHO MAY OR MAY NOT ADOPT.
[I. L. R., 13 Mad., 214

See MAHOMEDAN LAW—ENDOWMENT
[I. L. R., 22 Calc., 324
L. R., 22 I. A., 4

See MAHOMEDAN LAW—GIFT—VALIDITY
[I. L. R., 16 Mad., 43

See ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE
[I. L. R., 18 Calc., 545
L. R., 18 I. A., 144
I. L. R., 12 All., 523

See VENDOR AND PURCHASER—INVALID SALES . 1 B. L. R., A. C., 95
Cor., 57
I. L. R., 5 Bom., 450

See WILL—EXECUTION.
[I. L. R., 22 Bom., 17
L. R., 24 I. A., 148

See WILL—VALIDITY OF WILL.
[I. L. R., 7 Mad., 515

——— **Onus of proof**—*Third party not in confidential relationship*—A third person who stands in no confidential relation to a grantor who is under age is not bound in the first instance to show that undue influence was used in a transaction. The subject of undue influence considered. RAJ COOMAR ROY *v.* ALFEZUDDIN AHMED . 8 C. L. R., 419

UNLAWFUL ASSEMBLY.

See CHARGE—FORM OF CHARGE—SPECIAL CASES—RIOTING.
[I. L. R., 21 Calc., 627, 955
I. L. R., 26 Calc., 630
3 C. W. N., 605

See CHARGE—FORM OF CHARGE—SPECIAL CASES—UNLAWFUL ASSEMBLY.
[4 C. W. N., 190

UNLAWFUL ASSEMBLY—*continued.*

See CHARGE TO JURY—SPECIAL CASES—RIOTING . I. L. R., 21 Calc., 955

See CHARGE TO JURY—SPECIAL CASES—UNLAWFUL ASSEMBLY.
[4 C. W. N., 196

See CASES UNDER RIOTING.

1. ——— **Penal Code, s. 141**—*Rioting—Assembly originally lawful*—An assembly, lawful in its inception, may become unlawful by its acts. If force is used the higher offence of rioting is committed. QUEEN *v.* KHEMEE SINGH
[1 W. R., Cr., 19

2. *Common object*—In order to convict of the offence of being members of an unlawful assembly, it must be shown that the accused were actuated by a common object, and that the acts done by them were of such a nature as to make them guilty under s. 141 of the Penal Code. QUEEN *v.* DINOBUNDO RAI 9 W. R., Cr., 10

IN THE MATTER OF THE PETITION OF KOYLASH CHUNDER DASS 20 W. R., Cr., 78

3. **Penal Code (Act XLV of 1860), ss. 141 and 147**—A party of persons, consisting of some five peadas and a number of coolies sufficient for the work to be done, went to a spot on a river flowing through the lands of *M* for the purpose of either repairing or erecting a bund across it to cause the water to flow down a channel on the lands of their master *T*. The river at the time was almost dry, and the party did not go armed ready to fight or use force, and they did not during the subsequent occurrence use force. Having arrived at the spot about 10 A.M., they proceeded to work at the bund until the afternoon. At about 4 P.M. a body of men, consisting of about 1,200 in all many of them armed with lathies and headed by the prisoners, who were servants of *M*, which had been seen collecting together during the day, proceeded to the spot, and about 25 or 30 of them attacked *T's* men, some five of whom were more or less severely wounded with the lathies. The occurrence resulted in the conviction of some of *M's* servants for rioting under s. 147 of the Penal Code. *M's* people wholly denied any right on the part of *T* to construct or repair the bund, and had previously denied the existence of such right, and refused permission to *T* to exercise it. It was contended that the assembly of *M's* people was not an "unlawful assembly", that the interference by *T's* people with the channel of the river justified them in coming to stop the work, and the show and use of force in compelling them to do so. *Held* that the prisoners had been rightly convicted. It was further contended that *M's* people did not assemble to enforce a right or supposed right within the terms of s. 141 of the Penal Code, but to defend a right, and that such action did not make the assembly an unlawful one. *Held* that they were members of an assembly the common object of which was by show of criminal force, and by criminal force if necessary, to enforce

UNLAWFUL ASSEMBLY—*continued.*

the right to keep the river channel clear by preventing the construction of the bund and by demolishing it so far as it was constructed, and that the case came within s. 141, para. (4). *Queen* v. *Mitto Singh*, *3 W. R., Cr., 41*; *Shunker Singh* v. *Burmah Mahto*, *23 W. R., Cr., 25*; and *Birjoo Singh* v. *Khub Lall*, *19 W. R., Cr., 66*, referred to and commented on. GANOURI LAL DAS *v.* QUEEN-EMPRESS

[I. L. R., 16 Calc., 206

4. ——— Penal Code, ss. 141 and 154—*Owner of land on which unlawful assembly is held—Common object.*—*Held* that the owner or occupier of land on which an unlawful assembly is held cannot be convicted under s. 154 of the Penal Code, unless there is a finding that the riot was premeditated. Where two opposite factions commit a riot, it is irregular to treat both parties as constituting one unlawful assembly and to try them together, inasmuch as they do not have "one common object" within the meaning of s. 141 of the Penal Code. QUEEN *v.* SUBROOP CHUNDER PAUL

[12 W. R., Cr., 75

5. ——— *Affray and unlawful assembly.*—There is no ground for the distinction between an unlawful assembly as a premeditated act and an affray as a sudden one; for according to s. 141 of the Penal Code, an assembly which was not unlawful when it assembled may subsequently become an unlawful assembly. IN THE MATTER OF THE PETITION OF LOKENATH KAR

[18 W. R., Cr., 2

6. ——— *Maintenance of rights—Intention of parties.*—No charge of members of an unlawful assembly under s. 141, Penal Code, can be sustained, where the intention of the parties was not to enforce a right or supposed right, but to maintain undisturbed the actual subsisting enjoyment of a right which was at that time being exercised. SHUNKER SINGH *v.* BURMAH MAHTO

[23 W. R., Cr., 25

7. ——— *Person joining it and staying to prevent mischief to property.*—It cannot be said that a person intentionally joins an unlawful assembly or continues in it when it appears from the evidence that he went to the place where the members of the unlawful assembly were gathered, to prevent mischief being done to his own property which he had a right to protect. BIRJOO SINGH *v.* KHUB LALL . . . 19 W. R., Cr., 66

8. ——— *Raiyats carrying away crops.*—Where the defendants, raiyats of a portion of a zamindari sold in execution of a decree of the Civil Court, reaped and carried away their crops despite the purchaser's people, and refused to allow the purchaser's people to seal and mark grain which had been reaped and the raiyats were assembled in such numbers and so armed that nothing could be done against them,—*Held* by the High Court that the acts of the defendants did not amount to an offence under s. 141 of the Penal Code. ANONYMOUS

[4 Mad., Ap., 65

UNLAWFUL ASSEMBLY—*continued.*

9. ——— *Interrupting procession as a nuisance.*—*Held* that the act of the defendants in assembling and forcibly interrupting a procession was forbidden by cl. 4 of s. 141 of the Penal Code, although the defendants acted upon the ground that the procession was a nuisance or annoyance to them or their community. ANONYMOUS

[5 Mad., Ap., 6

10. ——— Penal Code, ss. 141, 143—*Assertion of right.*—One of two village factions objected to the other passing in procession over a vacant piece of ground in the main street of the village. An injunction prohibiting the procession was obtained in the Court of the District Munsif on 20th March. On 11th May a procession was formed and approached the ground in question. Forty-six members of the first-named faction were assembled there to prevent the procession by force: the police ordered them to disperse: this order having been neglected, the police prevailed on the other faction to abandon the procession. *Held* that the persons who did not disperse on being ordered to do so were guilty of the offence of being members of an unlawful assembly. QUEEN-EMPRESS *v.* TIRAKADU

[I. L. R., 14 Mad., 126

11. ——— Penal Code, s. 143—*Dispute as to possession of land—Assembly going with armed men to sow land.*—On the trial of certain persons charged with being members of an unlawful assembly, it was proved that there was a dispute of long standing between the accused and certain other parties regarding the possession of certain land; that neither of the parties was in undisturbed possession of the land; that the accused went to sow the land with indigo, accompained by a body of men armed with lathies; that they were prepared to use force, if necessary; and that the lathials kept off the opposite party by brandishing their weapons while the land was sowed. *Held* that the accused were rightly convicted of being members of an unlawful assembly, under s. 143 of the Penal Code. *Shunker Singh* v. *Burmah Mahto*, *23 W. R., Cr., 25*, distinguished. IN THE MATTER OF PEARY MOHUN SIRCAR. PEARY MOHUN SIRCAR *v.* EMPRESS

[I. L. R., 9 Calc., 639

S. C. IN THE MATTER OF PEARY MOHUN SIRCAR

[13 C. L. R., 80

12. ——— Penal Code, ss. 143 and 353—*Using criminal force to public servant in execution of duty—Resistance to search-warrant.*—Where the officer in charge of a police station required the officer in charge of another police station to cause a search to be made in a house within the limits of his station, and such officer, on being required, deputed two officers subordinate to him to make the search without delivering to them the order in writing required by s. 379 of Act X of 1872, it was held that the persons resisting the search attempted could not be lawfully convicted under ss. 353 and 143 of the Penal Code. QUEEN *v.* NARAIN . 7 N. W., 209

13. ——— Penal Code, s. 147—*Rioting—Abating nuisance.*—*A*, a joint owner of a parcel of land, erected on it an edifice without the consent of

UNLAWFUL ASSEMBLY—*continued.*

B, another joint owner A dispute arose, and the Magistrate on inquiry ordered, under s. 530 of the Criminal Procedure Code 1872, *A* to be put in possession of the part of the land on which the edifice had been erected *B* subsequently brought a suit in the Civil Court to establish his title to joint possession of the whole parcel, and for a declaration that *A* was not entitled to erect any edifice thereon, and he further prayed that such edifice should be removed. *B* obtained a decree, whereupon his servants went on the land and pulled it down They were charged before the Deputy Magistrate with having committed mischief, and on this convicted and fined On the 8th October the accused, who were the servants of *B*, found the men in the employ of *A* were putting up this erection, a nawbat khana, again, and accordingly protested against its erection, pulled down the bamboos, thrust aside the servants of *A*, throwing to the ground one man who was clinging to the bamboos On the 9th October 1877 these servants were charged before the Magistrate with rioting, and convicted under s 147, Penal Code *Held per* JACKSON, *J*, that, as the accused were not on the land in question as members of an unlawful assembly, nor for any unlawful purpose, the conviction, as well

S C IN THE MATTER OF THE PETITION OF RAJ COOMAR SINGH . . 3 C. L R., 63

14 ———— Penal Code, s 147 and s 105, cl. 4—*Mischief—Right of defence of property—Penal Code, s 105, cl 4* —Where land in the posses-

order convicting the servants of *A* of unlawful assembly as there was error in law in the order of the Magistrate, who found as a fact that the right of defence of private property had ceased under cl 4, s 105 of the Penal Code QUEEN *v* RAJ KISTO DOSS . . . 12 W. R., Cr, 43

15. —— — Penal Code, s 149—*Common object* —S 149 of the Penal Code creates no offence, but

object of the unlawful assembly, or such as the members of the assembly knew to be likely to be committed in prosecution of that object. QUEEN EMPRESS *v*. BISHESHAR I. L. R., 9 All., 645

16 ———— *Encouraging members of unlawful assembly.*—Where persons join an unlawful assembly for the purpose of committing an assault, and, instead of preventing those armed from using their weapons, encourage them to do so they are in the same position as those members of the unlawful assembly who struck the blows. QUEEN *v* DEBNATH ROY . . . 7 W. R., Cr, 63

17. *Riot in which man was killed—Culpable homicide* —In a case of riot in which a man was killed, the whole of the members of the unlawful assembly as well the victorious as the worsted, were held equally guilty of culpable homicide not amounting to murder QUEEN *v* MANA SINGH . 7 W. R., Cr., 103

18. ———— *Constructive murder under s 34, Penal Code Effect on others charged under s 149* —*Per* FIELD *J* —Where a prisoner is constructively guilty of murder under s 34 of the Penal Code, it is doubtful if he can be said to have committed the offence of murder within the meaning of s 149 so as to make other prisoners, by a double construction, guilty of murder IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON EMPRESS *v* JHUBBOO MAHTON

[I. L. R., 8 Calc., 739

S C JHUBBOO MAHTON *v* EMPRESS

[12 C L. R., 233

19. ———— *Common object* —Where a person was killed by a member of an unlawful assembly in prosecution of the common object of that assembly, the common object being the abduction of that person's mother,—*Held* that all those who were members of the assembly at the time such person was killed were guilty of the offence of killing her IN THE MATTER OF GOLAM ARFIN

[4 B. L. R., Ap, 47

S C QUEEN *v* GOLAM ARFIN

[13 W R., Cr, 33

20. — Penal Code, ss. 149 and 300, except 2—*Common object—Murder* —One member of an unlawful assembly whose common object was to eject certain persons from a piece of land, the title to which was disputed, fired at and killed one of such persons. *Held* by COUCH, C J., and JACKSON, PHEAR, and PONTIFEX, *JJ* (AINSLIE, *J* dissenting), that the act being sudden and unpremeditated, the other members of the assembly were not guilty of the offence of murder under s. 149 of the Penal Code, but of rioting armed with a deadly weapon under s. 148. QUEEN *v*. SABED ALI

[11 B L. R., F. B, 347: 20 W R., Cr., 5

21. ———— *Common object—Murder* —A large body of men belonging to one faction waylaid another body of men belonging to a second faction, and a fight ensued, in the course of which a member of the first mentioned faction was wounded, and retired to the side of the road taking no further active part in the affray After his retirement, a member of the second faction was killed, *Held* (by NORMAN, *J.*, whose opinion prevailed) that the wounded man had ceased to be a member of the unlawful assembly when he retired wounded, and that he could not, under s. 149 of the Penal Code, be made liable for the subsequent murder *Held* (by JACKSON, *J*) that he remained a member of the unlawful assembly QUEEN *v*. KABIL CAZEE

[3 B. L. R., A. Cr, 1

22. — *Prosecution of common object* —If a body of men armed with lathees

UNLAWFUL ASSEMBLY—*continued.*

and under the leadership of one who to the knowledge of the rest is armed with a gun, assembled for the purpose of forcibly carrying off another man's property, and if in effecting that purpose any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code. *Queen* v. *Sabed Ali, 11 B. L. R., 347 : 20 W. R., Cr., 5,* cited. HARI SINGH *v.* EMPRESS [3 C. L. R., 49

23. ——— *Acts taking place after unlawful assembly is over.*—Where, after the object of an unlawful assembly had been accomplished and the opposite party driven away, one of the members entered into an altercation with another and wounded him with a fish-spear, it was held that the act was not one done with a view to accomplish the common object of the assembly, or one which the rest knew would be likely to be committed in the prosecution of that object. QUEEN *v.* BINOD [24 W. R., Cr., 66

24. ——— **Penal Code, ss. 151 and 188** —*Assembly of five or more persons—Lawful command.*—Where the object of only three persons was to draw a crowd and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace,—*Held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code (Act XLV of 1860), and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section. An order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X of 1872). EMPRESS *v.* TUCKER . . . I. L. R., 7 Bom., 42

25. ——— **Penal Code (Act XLV of 1860), ss. 303, 304**—*Good faith—Order of superior officer—Firing on an unlawful assembly.* *A* caused crops to be sown on land, as to the enjoy[illegible] of which there was a dispute between her and [illegible] Persons having proceeded to reap the crops on [illegible] f of *B*, the servants of *A* went to the place with [illegible] station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air. Some of the reapers remained and assumed a defiant attitude. The station-house officer, without attempting to make any arrests and without warning the reapers that, if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired and mortally wounded one of the reapers. It was found that neither the station-house officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held* that the station-house officer and the constable were not acting in good faith, and that the order to shoot was illegal and did not justify

UNLAWFUL ASSEMBLY—*continued.*

the constable, and that both he and the station-house officer were guilty of murder. QUEEN-EMPRESS *v.* SUBBA NAIK . . I. L. R., 21 Mad., 249

26. ——— **Penal Code, ss. 147, 148, 149, and 304**—*Rioting armed with a deadly weapon—Common object of unlawful assembly, Statement of, in charge—Error in charge misleading accused—Criminal Procedure Code (1882), s. 225.* —Before a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge sheet,—*Held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not had an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section. SABIR *v.* QUEEN-EMPRESS [I. L. R., 22 Calc., 276

27. ——— **Penal Code, s. 149**—*Common object—Murder—Prosecution of common object.*—Neither of the cases of *Queen* v. *Sabed Ali, 11 B. L. R., F. B., 347 : 20 W. R., Cr., 5,* and *Hari Singh* v. *Empress, 3 C. L. R., 49,* lays down any hard and fast rule as to the circumstances under which one member of an unlawful assembly can be deemed guilty of an offence committed by another under the provisions of s. 149 of the Penal Code, and every case must be decided on its own merits. In dealing with such cases, while, on the one hand, it is necessary for the protection of the accused that he should not, merely by reason of his association with others as members of an unlawful assembly, be held criminally liable for offences committed by his associates, which he himself neither intended nor knew to be likely to be committed. On the other hand, it is equally necessary for the protection of the peace that members of an unlawful assembly should not lightly be let off from suffering the penalties for offences for which, though committed by *others*, the law has made them punishable by reason of their association with the actual offender with one common object. Those two cases respectively emphasize the necessity of keeping these considerations in view. Members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects, and the knowledge possessed by each member of what is likely to be committed in prosecution of their common object will vary, not only according to the information at his command, but also according to the extent to which he shares the community of object, and as a consequence of this the effect of s. 149 may be

UNLAWFUL [illegible]

[illegible]

UNLAWFUL [illegible]

[illegible]

Criminal [illegible]

Penal [illegible]

[illegible] Penal Code [illegible] two former sections [illegible]

[illegible]

Quasi-[illegible]

UNLIQUIDATED [illegible]

[illegible]

UNLAWFUL ASSEMBLY—*continued.*

and under the leadership of one who to the knowledge of the rest is armed with a gun, assembled for the purpose of forcibly carrying off another man's property, and if in effecting that purpose any one of the party, taking the gun, shoots and kills a person who is making a lawful resistance, the whole party may properly be convicted of murder under s. 149 of the Penal Code. *Queen* v. *Sabed Ali, 11 B. L. R., 347 : 20 W. R., Cr., 5,* cited. HARI SINGH *v.* EMPRESS [3 C. L. R., 49

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24. ——— **Penal Code, ss. 151 and 188**—*Assembly of five or more persons—Lawful command.*—Where the object of only three persons was to draw a crowd and their action was such as was calculated to and did draw a crowd of fifty or sixty persons likely to cause a disturbance of the public peace,—*Held* that the gathering constituted an assembly of five or more persons within the meaning of s. 151 of the Penal Code (Act XLV of 1860), and that a refusal to disperse after being lawfully commanded to disperse rendered every member of the gathering liable to conviction under the said section. An order given by an officer superior in rank to an officer in charge of police stations commanding an assembly of five or more persons likely to cause a disturbance of the public peace to disperse is a lawful order within the meaning of s. 480 of the Code of Criminal Procedure (Act X of 1872). EMPRESS *v.* TUCKER . . . I. L. R., 7 Bom., 42

25. ——— **Penal Code (Act XLV of 1860), ss. 302, 304**—*Good faith—Order of superior officer—Firing on an unlawful assembly.*—*A* caused crops to be sown on land, as to the enjoyment of which there was a dispute between her and *B*. Persons having proceeded to reap the crops on behalf of *B*, the servants of *A* went to the place with the station-house officer and some constables who were armed. The station-house officer ordered the reapers to leave off reaping and to disperse, but they did not do so; he then told one of the constables to fire, and he fired into the air. Some of the reapers remained and assumed a defiant attitude. The station-house officer, without attempting to make any arrests and without warning the reapers that, if they did not desist from reaping, they would be fired at, gave orders to shoot, and one of the constables fired and mortally wounded one of the reapers. It was found that neither the station-house officer nor the last-mentioned constable believed that it was necessary for the public security to disperse the reapers by firing on them. *Held* that the station-house officer and the constable were not acting in good faith, and that the order to shoot was illegal and did not justify the constable, and that both he and the station-house officer were guilty of murder. QUEEN-EMPRESS *v.* SUBBA NAIK . . I. L. R., 21 Mad., 249

26. ——— **Penal Code, ss. 147, 148, 149, and 304**—*Rioting armed with a deadly weapon—Common object of unlawful assembly, Statement of, in charge—Error in charge misleading accused—Criminal Procedure Code (1882), s. 225.*—Before a conviction can properly be maintained for the offence of rioting, it is necessary that there should be a clear finding as to the common object of the unlawful assembly, and also that the common object so found should have been stated in the charge in order that the accused person might have an opportunity of meeting it. Where a Sessions Judge in his charge to the jury referred to two possible common objects of an unlawful assembly, one of which only had been set out in the charge sheet,—*Held* that, inasmuch as it was impossible to say which of the two common objects had been accepted by the jury, and it might well have been that they had accepted the one which had not been charged, and which consequently the accused had not had an opportunity of meeting, the conviction must be set aside. If one member of an unlawful assembly is armed with a deadly weapon, the other members cannot on that account be charged under s. 148 of the Penal Code. It is only the actual person who can be charged under that section. SABIR *v.* QUEEN-EMPRESS [I. L. R., 22 Calc., 276

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UNLAWFUL ASSEMBLY—*concluded.*

different on different members of the same unlawful assembly. JAHIRUDDIN *v* QUEEN-EMPRESS [I. L. R., 22 Calc., 306

UNLAWFUL COMPULSION.

See COMPOUNDING OFFENCE [I. L. R., 21 Calc., 103

——— Unlawful compulsory labour—*Criminal force—Slavery—Wrongful confinement—*

and that they were locked up at night. On these allegations the accused was convicted by the first

by NORRIS, J.—That upon the facts of the case the complainants never gave their full and free consent to work and labour for the accused, and that the accused therefore did unlawfully compel them to labour against their will, and that *the conviction* under s. 374 was right. MADAN MOHAN BISWAS *v* QUEEN-EMPRESS . I. L. R., 19 Calc., 572

UNLIQUIDATED DAMAGES.

See INSOLVENT ACT, s. 40 [13 B. L. R., Ap., 2

See INTEREST—MISCELLANEOUS CASES—UNLIQUIDATED DAMAGES. [7 Bom., A. C., 89
9 Bom., 7

See SET-OFF—GENERAL CASES. [17 W. R., 113
3 Mad., 296
3 Agra, 43, 97
23 W. R., 1
I. L. R., 4 Bom., 407
I. L. R., 11 Calc., 557
I. L. R., 7 All., 284

UNNATURAL OFFENCE.

——— Penal Code, s. 377—*Charge—Particulars as to time, place, and person—Criminal Procedure Code, 1882, s. 222*—*Held* where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom, the offence was committed, and without any proof of these particulars, the facts proved

[I. L. R., 6 All., 204

UNPROFESSIONAL CONDUCT.

See CASES UNDER PLEADER—REMOVAL SUSPENSION, AND DISMISSAL

UNSEAWORTHINESS.

See CONTRACT—CONDITIONS—PRECEDENT [3 B. L. R., O. C., 127

See DAMAGES—REMOTENESS OF DAMAGES. [6 B. L. R., Ap., 20

See INSURANCE—MARINE INSURANCE. [Cor., 5, 2 Hyde, 107
5 Moore's I. A., 381

UNSETTLED POLLIAM.

sarily only a tenure for life, or at the will of the Government. Each case must depend upon its own particular circumstances. The existence of a pro-

this respect between a polliam and an ordinary zamindari. OOLAGAPPA CHETTY *v* ARBUTHNOT COLLECTOR OF TRICHINOPOLY *v* LEKAMANI. PEDDA AMANI *v* ZAMINDAR OF MARUNGAPURI [14 B. L. R., 115: 21 W. R., 358
L. R., 1 I. A., 268, 282

S C in High Court. ARBUTHNOT *v* OOLAGAPPA CHETTY . . 5 Mad., 303

And LEKHAMANI *v* RANGA KRISTNA MUTTA VIRA PUCHAYA NAIKAR . 6 Mad., 208

UNSOUNDNESS OF MIND.

See INSANITY.

See LUNATIC.

UNLAWFUL ASSEMBLY—*continued.*

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UNLAWFUL ASSEMBLY—*concluded.*

different on different members of the same unlawful assembly. JAHIRUDDIN *v* QUEEN-EMPRESS
[I. L. R., 22 Calc., 306

UNLAWFUL COMPULSION.

See COMPOUNDING OFFENCE
[I. L. R., 21 Calc., 103

——— Unlawful compulsory labour—*Criminal force—Slavery—Wrongful confinement—Penal Code (Act XLV of 1860), ss 344, 352, 374*—The accused induced the complainants, who he alleged, were indebted to him in various sums of money, to consent to live on his premises and to work off their debts The complainants were to, and did in fact, receive no pay, but were fed by the accused as his servants He insisted on their working for him, and punished them by beating them if they did not do so The complainants in addition alleged that they were prevented leaving the accused's premises, and that they were locked up at night. On these allegations the accused was convicted by the first Court of offences under ss. 344, 370, and 374 of the Penal Code. On appeal the convictions under the two former sections were quashed, the evidence as to detention being disbelieved, but that under s. 374 was upheld on the ground that by magnifying the complainants' debts to him and never settling their accounts the accused had unlawfully compelled them to go on working for him against their wills On a rule to show cause why the conviction should not be quashed,—*Held* (by PETHERAM, *C J*, and BEVERLEY, *J*) that the conviction was erroneous and must be set aside. PETHERAM, *C.J* —A person who insists that another, who has consented to serve him, shall perform his work, does not unlawfully compel such person to labour against his will within the meaning of s. 374 of the Penal Code, because it is a thing which such person has agreed to do, but if he assaults such person for not working to his satisfaction, he commits an offence punishable under s. 352. *Held* by NORRIS, *J* —That upon the facts of the case the complainants never gave their full and free consent to work and labour for the accused, and that the accused therefore did unlawfully compel them to labour against their will, and that the conviction under s 374 was right. MADAN MOHAN BISWAS *v* QUEEN-EMPRESS . I. L. R., 19 Calc., 572

UNLIQUIDATED DAMAGES.

See INSOLVENT ACT, s 40
[13 B. L. R., Ap., 3

See INTEREST—MISCELLANEOUS CASES—UNLIQUIDATED DAMAGES.
[7 Bom., A. C., 89
9 Bom., 7

See SET OFF—GENERAL CASES.
[17 W. R., 113
2 Mad., 296
3 Agra, 13, 97
22 W. R., 1
I. L. R., 4 Bom., 407
I. L. R., 11 Calc., 557
I. L. R., 7 All., 284

UNNATURAL OFFENCE.

——— Penal Code, s. 377—*Charge—Particulars as to time, place, and person—Criminal Procedure Code, 1882, s 222*—*Held* where a person was tried for an unnatural offence and convicted on a charge which did not allege the time when, place where, or point to any known or unknown person with whom, the offence was committed, and without any proof of these particulars, the facts proved [illegible]
[I. L. R., 6 All., 204

UNPROFESSIONAL CONDUCT.

See CASES UNDER PLEADER—REMOVAL SUSPENSION, AND DISMISSAL.

UNSEAWORTHINESS.

See CONTRACT—CONDITIONS—PRECEDENT
[3 B. L. R., O. C., 137

See DAMAGES—REMOTENESS OF DAMAGES.
[6 B. L. R., Ap., 20

See INSURANCE—MARINE INSURANCE.
[Cor., 5. 3 Hyde, 107
5 Moore's I. A., 361

UNSETTLED POLLIAM.

——— Hereditary tenure—*Evidence of possession or receipt of rent*—There is no long uniform current of decisions at Madras sufficient to show that every polliam, not permanently settled, is necessarily only a tenure for life, or at the will of the Government Each case must depend upon its own particular circumstances. The *existence of a proprietary estate therein, and the tenure by which it* has been held, are matters judicially determinable on legal evidence In India the proof of possession or [illegible] this respect between a polliam and an ordinary zamindari. OOLAGAPPA CHETTY *v* ARBUTHNOT COLLECTOR OF TRICHINOPOLY *v* LEKAMANI. PEDDA AMANI *v* ZAMINDAR OF MARUNGAPURI
[14 B. L. R., 115 21 W. R., 358
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S C in High Court. ARBUTHNOT *v* OOLAGAPPA CHETTY . . . . 5 Mad., 303

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UNSOUNDNESS OF MIND.

See INSANITY.

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UNSTAMPED DOCUMENTS.

—— Admissibility of, in evidence.

See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED IN COURT BELOW—UNSTAMPED DOCUMENTS.

See CASES UNDER EVIDENCE—CIVIL CASES—SECONDARY EVIDENCE — UNSTAMPED OR UNREGISTERED DOCUMENTS.

UPAN CHOWKI TENURE.

See MESNE PROFITS—RIGHT TO AND LIABILITY FOR . 1 B. L. R., A. C., 167

USAGE.

See CASES UNDER CUSTOM.

USE AND OCCUPATION.

See LANDLORD AND TENANT—HOLDING OVER AFTER TENANCY . 4 W. R., 24
[12 W. R., 289
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See LANDLORD AND TENANT—LIABILITY FOR RENT . I. L. R., 16 Bom., 568

See MUNSIF, JURISDICTION OF.
[I. L. R., 23 Calc., 425

See SMALL CAUSE COURT, MOFUSSIL — JURISDICTION—RENT, SUIT FOR.
[I. L. R., 5 Bom., 572
I. L. R., 6 Bom., 79
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I. L. R., 24 Calc., 557
I. L. R., 22 Mad., 149

—— Decree for—

See PLAINT—AMENDMENT OF PLAINT.
[I. L. R., 22 Calc., 752

See VARIANCE BETWEEN PLEADING AND PROOF—SPECIAL CASES—RENT.
[5 N. W., 65
22 W. R., 346
13 B. L. R., 243
I. L. R., 27 Calc., 239

USER.

See FERRY . I. L. R., 18 Calc., 652

See FISHERY, RIGHT OF.
[I. L. R., 12 Mad., 43

See POSSESSION—ADVERSE POSSESSION.
[I. L. R., 16 Bom., 338

See CASES UNDER PRESCRIPTION.

See CASES UNDER RIGHT OF WAY.

Before the Limitation Act of 1871 no precise time had been laid down as sufficient to create a right of user.

USER—*continued.*

See MULLICK KARIM BAKSH *v.* HARRIHAR MANDAR . 5 B. L. R., 174 : 13 W. R., 440

KISTO MOHUN MOOKERJEE *v.* JUGGURNATH ROY JOOGEE . . . . . 11 W. R., 236

HURO SOONDUREE DEBIA *v.* RAM DHUN BHUTTACHARJEE . . . . . 7 W. R., 276

1. —— Proof of right of user—*"All along" or "from before."*—A user "all along" or "from before" does not necessarily prove a right. Its existence must be proved from a time from which the right would be gained or presumed to have been gained. MOOKTARAM BHUTTACHARJEE *v.* HURRO CHUNDER ROY . . . . 7 W. R., 1

2. —— *Right to outlet for water—Easement.*—In a suit to close up an outlet of water opened by the defendant, the lower Appellate Court found that the "outlet, or seuch" was used (barabar) all along, and that therefore the defendant had a right of user. *Held* that an enjoyment for at least twelve years is necessary to create a right by user, and that user by the defendant for that period at least had been found. KARTIK CHANDRA SIRKAR *v.* KARTIK CHANDRA DEY
[3 B. L. R., A. C., 166 : 11 W. R., 522

3. —— *Use for many years.*—In a suit for a declaration of the right of user over the water of a tank, which right was denied, the finding of the lower Appellate Court, from the evidence of witnesses adduced by plaintiff, that plaintiff had used the water for many years, was held to be sufficient to prove a continuous and uninterrupted user on the part of the plaintiff. TOOLSEE DOSS KOBEERAJ *v.* BHYRUB LALL TEWAREE
[8 W. R., 311

4. —— *Prescription—Ancient and uninterrupted right—Easement.*—A party claiming the right of user by prescription over the property of another must show not only that the right has existed from ancient days, but also that it has been exercised as of right, and has not been interrupted. MALLIK JAWAD-UL-HUQ *v.* RAM PRASAD DAS . . . 3 B. L. R., A. C., 281

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[15 W. R., 401

5. —— *Interruption of right of easement.*—The mere fact of user for any number of years will not be sufficient to confer a right, if the user be from time to time interrupted by the owner resuming, as occasion may require, the exclusive use of his land. In such a case the user will be treated as permissive merely, and not as the exercise of a right. AUKHOY COOMAR CHUCKERBUTTY *v.* MOLLAH NOBEE NOWAZ . . 13 W. R., 449

6. —— *Wrongful interruption — Acquiescence.* — Wrongful interruption does not destroy a right of user where steps are immediately taken to assert the right; but if this is not done for a length of time, acquiescence may safely be presumed. HEERALALL KOOER *v.* PURMESSUR KOOER . . . . . 15 W. R., 401

USER—*concluded*

7. ———— *Letting house to tenant* —Where a right of user of a drain or passage is incidental to a house, that right is not affected by the owner of the house letting the house to a tenant AMJUDEE BEGUM *v* AHMED HOSSEIN [6 W. R , 314

8 ———— *Long user by tenants of a plot of their landlord's land as a threshing floor—Conditions or contract of tenancy—Presumption* – On evidence that a tenant has for a great number of years used a particular piece of the zamindar's land along with other tenants as a threshing floor it is competent to the Court to find there being no evidence to the contrary, that the right to use the plot of land for that purpose was part of the contract of tenancy *Udit Singh* v *Kashi Ram, I L R , 14 All , 185*, distinguished DALEL *v* BHAJJU I. L. R., 16 All , 181

9 ————*License to use land*
...*ocation of*
... license to
... h a grant,
... subject to
... revoked
the right of the
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applied PROSO...
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USUFRUCTUARY MORTGAGE.

See DECREE—FORM OF DECREE—MORTGAGE I. L. R , 1 All., 524
[I. L. R., 11 Mad., 88

See CASES UNDER LEASE—ZUR I PESHGI LEASE.

See LIMITATION ACT, 1877, s 19 (1859 s 1, cl. 15)—ACKNOWLEDGMENT OF OTHER RIGHTS . 13 B L R., 177
[1 C W N , 513

See CASES UNDER MORTGAGE—POSSESSION UNDER MORTGAGE

USURY.

See CASES UNDER BENGAL REGULATION XV OF 1793.

See HINDU LAW—ALIENATION—ALIENATION BY FATHER.
[I L. R , 2 Calc , 213

See CASES UNDER HINDU LAW—USURY

See CASES UNDER INTEREST — STIPULATIONS AMOUNTING OR NOT TO PENALTIES.

See CASES UNDER MAHOMEDAN LAW—USURY

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See RIGHT OF OCCUPANCY—ACQUISITION OF RIGHT—MODE OF ACQUISITION
[20 W. R., 323
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VACATION

———— Closing of Court for—

See APPEAL TO PRIVY COUNCIL—PRACTICE AND PROCEDURE—TIME FOR APPEALING 1 B L. R., O. C , 39
[12 W R., 293
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See CASES UNDER LIMITATION ACT, 1877, s 5 (1871 s. 5)

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See CIVIL PROCEDURE CODE, s 307
[I. L. R , 20 Bom , 745

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See PENAL CODE s 186
[I. L R., 15 Mad , 83

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[I. L. R , 5 Bom , 258

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See PRISONER 1 Bom., 16

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[I L. R., 3 Calc., 707

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[I. L. R , 8 Mad , 14

———— Right of, to plead on Original Side of High Court

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[I. L R., 1 Mad , 24

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See ATTORNEY AND CLIENT
[11 B L. R., 60 note

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[3 Agra, 286
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See CASES UNDER APPEAL TO PRIVY COUNCIL—CASES IN WHICH APPEAL LIES OR NOT—VALUATION OF APPEAL.

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1. SUITS 9275
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See CASES UNDER APPELLATE COURT—REJECTION OR ADMISSION OF EVIDENCE ADMITTED OR REJECTED IN COURT BELOW—VALUATION OF SUIT.

See COSTS—SPECIAL CASES—VALUATION OF SUIT.

See CASES UNDER COURT FEES ACT.

See JURISDICTION—QUESTION OF JURISDICTION—WRONG EXERCISE OF JURISDICTION . . . 22 W. R., 301
[I. L. R., 8 Bom., 31

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[5 B. L. R., 305
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See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE—VALUATION OF SUIT.

1. SUITS.

1. ——— Question of valuation—*Procedure.*—Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial. JOYTARA DASSEE *v.* MAHOMED MOBARUCK
[I. L. R., 8 Calc., 975: 11 C. L. R., 399

2. ——— Computation of value—*Stamp duty—Valuation of subject-matter for purpose of determining jurisdiction.*—The valuation of a suit for the purposes of stamp duty, and the valuation of the subject-matter of the suit for the purpose of determining the jurisdiction of the Court in appeal, are two different things. The value of the suit for the purposes of stamp duty is fixed by certain rules which determine an artificial value for those purposes. The value of the subject-matter of a suit on appeal, on which depends the jurisdiction of the several grades of civil suits, is the actual value of the property in litigation. AUKHIL CHUNDER SEN ROY *v.* MOHINY MOHUN DASS
[I. L. R., 5 Calc., 489: 4 C. L. R., 491

3. ——— *Valuation for purposes of jurisdiction.*—Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, should govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. JAG LAL *v.* HAR NARAIN SINGH
[I. L. R., 10 All., 524

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

4. ——— *Valuation for purposes of jurisdiction—Court Fees Acts.*—The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. DAYACHAND *v.* HEMCHAND DHARAMCHAND
[I. L. R., 4 Bom., 515

5. ——— *Jurisdiction of Munsif—Mad. Regs. VI of 1816, s. 11, and III of 1833.*—The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by s. 11, Regulation VI of 1816, and Regulation III of 1833, and not in that prescribed in the Stamp Acts. THIAGARAJA MUDALI *v.* RAMANUJA CHARRY. CHINNASAMI CHETTI *v.* NANJAPPASARY. JUNJLA VENKATARAYADU *v.* JUNJLA KAMAMMAH . 6 Mad., 151

6. ——— *Court Fees Act, 1870, s. 12—Class of suit in which particular suit ranks.*—S. 12 of the Court Fees Act, which makes the decision of a Court in which a plaint or memorandum of appeal is filed final on questions relating to valuation for the purpose of determining the amount of any fee chargeable does not affect a question as to the class of suits in which a particular suit ranks. ANNAMALAI CHETTI *v.* CLOETE
[I. L. R., 4 Mad., 204

7. ——— *Court Fees Act, 1870, s. 12—Non-payment of sufficient Court-fee.*—S. 12 of the Court Fees Act (VII of 1870) applies merely to the valuation of property for the purpose of calculating the Court-fee when there is no question as to the article of the schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong article in the schedule of the Act. It does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad Singh* v. *Gunga Pershad, I. L. R., 6 Calc., 249: 6 C. L. R., 567.* OMRAO MIRZA *v.* JONES
[12 C. L. R., 148

8. ——— *Jurisdiction—Market value of subject-matter, Mode of computing—Court Fees Act (VII of 1870), ss. 6 and 12.*—For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market value of the subject-matter of the suit, and not by the special rules applicable to valuation laid down in Act VII of 1870. NANHOON SINGH *v.* TOFANEE SINGH
[12 B. L. R., 113: 20 W. R., 33

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[12 B. L. R., 115 note: 18 W. R., 109

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See Cases under Appellate Court—Rejection or Admission of Evidence admitted or rejected in Court below—Valuation of Suit.

See Costs—Special Cases—Valuation of Suit.

See Cases under Court Fees Act.

See Jurisdiction—Question of Jurisdiction—Wrong Exercise of Jurisdiction . . . 22 W. R., 301 [I. L. R., 8 Bom., 31

See Recorders Act, s. 27. [5 B. L. R., 305 8 B. L. R., Ap., 91

See Special or Second Appeal—Other Errors of Law or Procedure—Valuation of Suit.

1. SUITS.

1. ———— **Question of valuation**—*Procedure.*—Whether or not a suit has been properly valued is a preliminary question which ought to be disposed of before the case goes to trial. Joytara Dassee *v.* Mahomed Mobaruck

· [I. L. R., 8 Calc., 975 : 11 C. L. R., 399

2. ———— **Computation of value**—*Stamp duty—Valuation of subject-matter for purpose of determining jurisdiction.*—The valuation of a suit for the purposes of stamp duty, and the valuation of the subject-matter of the suit for the purpose of determining the jurisdiction of the Court in appeal, are two different things. The value of the suit for the purposes of stamp duty is fixed by certain rules which determine an artificial value for those purposes. The value of the subject-matter of a suit on appeal, on which depends the jurisdiction of the several grades of civil suits, is the actual value of the property in litigation. Aukhil Chunder Sen Roy *v.* Mohiny Mohun Dass

[I. L. R., 5 Calc., 489 : 4 C. L. R., 491

3. ———— *Valuation for purposes of jurisdiction.*—Questions of jurisdiction, whether with reference to the nature of the suit or with reference to the pecuniary limits of the claim, are matters to be governed by the statements contained in the plaint in the cause. The valuation of the claim as preferred by the plaintiff, and not as set up by the plea in defence, should govern the action, not only for the purposes of the original Court, but also for the purposes of appeal, and indeed throughout the litigation. Jag Lal *v.* Har Narain Singh

[I. L. R., 10 All., 524

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

4. ———— *Valuation for purposes of jurisdiction—Court Fees Acts.*—The valuation of suits for the purpose of jurisdiction is perfectly distinct from their valuation for the fiscal purpose of Court-fees. Therefore Court Fees Acts, which are fiscal enactments, are not to be resorted to for construing enactments which fix the valuation of suits for the purpose of determining jurisdiction. Dayachand *v.* Hemchand Dharamchand

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5. ———— *Jurisdiction of Munsif—Mad. Regs. VI of 1816, s. 11, and III of 1833.*—The valuation of the matters of litigation for the purpose of determining the jurisdiction of Munsifs is to be made in the mode prescribed by s. 11, Regulation VI of 1816, and Regulation III of 1833, and not in that prescribed in the Stamp Acts. Thiagaraja Mudali *v.* Ramanuja Charry. Chinnasami Chetti *v.* Nanjappasary. Junjla Venkatarayadu *v.* Junjla Kamammah . 6 Mad., 151

6. ———— *Court Fees Act, 1870, s. 12—Class of suit in which particular suit ranks.*—S. 12 of the Court Fees Act, which makes the decision of a Court in which a plaint or memorandum of appeal is filed final on questions relating to valuation for the purpose of determining the amount of any fee chargeable does not affect a question as to the class of suits in which a particular suit ranks. Annamalai Chetti *v.* Cloete

[I. L. R., 4 Mad., 204

7. ———— *Court Fees Act, 1870, s. 12—Non-payment of sufficient Court-fee.*—S. 12 of the Court Fees Act (VII of 1870) applies merely to the valuation of property for the purpose of calculating the Court-fee when there is no question as to the article of the schedule of the Act with reference to which the valuation is to be made, and does not apply to a case in which it is contended that the property has been wrongly valued, but that the relief has been improperly estimated by putting it under a wrong article in the schedule of the Act. It does not contemplate a case on which the Court refuses to hear a suit on the ground that a sufficient Court-fee has not been paid. See *Ajoodhya Pershad Singh* v. *Gunga Pershad, I. L. R., 6 Calc., 249 : 6 C. L. R., 567.* Omrao Mirza *v.* Jones

[12 C. L. R., 148

8. ———— *Jurisdiction—Market value of subject-matter, Mode of computing—Court Fees Act (VII of 1870), ss. 6 and 12.*—For the purpose of determining the question of jurisdiction, the valuation of a suit should be computed according to the market value of the subject-matter of the suit, and not by the special rules applicable to valuation laid down in Act VII of 1870. Nanhoon Singh *v.* Tofanee Singh

[12 B. L. R., 113 : 20 W. R., 33

Jeebraj Singh *v.* Inderjeet Mahtoon

[12 B. L. R., 115 note: 18 W. R., 109

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VALUATION OF SUIT—*continued*

1 SUITS—*continued.*

for purposes of jurisdiction KHUSHALCHAND MULCHAND *v* NAGINDAS MOTICHAND

[I L R., 12 Bom, 675

24 ——— - Adoption, Suit to set aside —*Suit by reversioner—Jurisdiction* —For the purpose of determining the jurisdiction over a suit by a reversioner to set aside an adoption, the loss which would accrue to the adopted person, should the adoption be declared invalid, is the measure of the value of the subject matter of the suit KESHAVA SANABHAGA *v* LAKSHMINARAYAN

[I. L R, 6 Mad, 192

25 ——————— *Court Fees Act, s 7—Suits Valuation Act (VII of 1887), ss 4, 10* —The value, for the purposes of jurisdiction, of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside but the value put upon his plaint by the plaintiff *Keshava Sanabhaga* v *Lakshmi Narayana, I L R, 6 Mad, 192*, dissented from SHEO DENI RAM *v* TULSHI RAM

[I L R, 15 All, 378

26. ——— Annuity, Suit for declaration of right to—*Act XXVI of 1867—Stamp Act, 1862, sch A, cl 2*—In a suit for a declaration of right to an annuity (varshasan) it was held that the stamp for the petition of special appeal should be regulated by the market value of the annuity, and that *primâ facie* ten times the amount of the annuity might be assumed to be its market value as enacted for analogous agreements by s 2, sch A, Act X of 1862 NARSINVACHARYA *v.* SVAMI RAYA CHARYA

[5 Bom, A. C, 65

27. ——— Attachment, Suit to set aside—*Suit by trustees' deed given by insolvent for benefit of creditors* —The valuation for stamp duty of a suit brought by the trustees of an assignment by an insolvent trader for the benefit of his creditors to set aside an attachment by an execution-creditor should be calculated on the value of the lien claimed by the judgment creditor STEPHENSON *v* BAUMGARTNER 3 Agra, 104

28 ———————— *Suit under Civil Procedure Code, 1882, s 283—Stamp—Possession—Court Fees Act, VII of 1870 sch II, art 17, cl 1* —When a party prefers a claim or makes any objection to the attachment of any property in execution of a decree but fails to establish it, and brings a suit under s 283 of the Code of Civil Procedure (Act XIV of 1882) to establish his right to the pro- [illegible]

[illegible]

in such a suit to be awarded possession *Parrats v. Kisan Sing, Judgments for 1881, p 121* followed *Ganpatgir Guru Bholagir v Ganpatgir, I. L. R., 8 Bom, 230*, distinguished. DHONDO SAKHARAM *v* GOVIND BABAJI . I. L. R., 9 Bom, 20

29 ——— Attachment, Suit to set aside order removing—*Court Fees Act, VII of 1870, ss 6 and 12, and sch II, art 17, cl 1—Valuation by subordinate Court—Suit to re-establish* [illegible]

[illegible]

judgment debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside,—*Held* that the proper stamp on a plaint of that kind was R10 under s 6 and sch II, art 171, of the Court Fees Act, VII of 1870 VITAL KRISHNA *v.* BALKRISHNA JANARDAN I L R, 10 Bom., 610

30 ——— Award, Suit to carry out.—A suit to carry out an arbitration award need not be valued KHODA BUKSH *v* MOWLA BUKSH

[14 W. R., 255

31 ——— Award, Application to file —*Civil Procedure Code 1882 s 525* —The proper [illegible]

[illegible]

S C PALUT BHAGUT *v* MONOHUR BHAGUT

[13 C L R, 171

32 Charge on property, Suit to establish—*Madras Civil Courts Act 1873—Subject matter of suit* —For the purposes of jurisdiction (Madras Civil Courts Act 1873) the subject-matter of a suit to establish the validity of a charge upon property is when the property is in excess of the charge, the amount of the charge, when the charge is in excess of the property, the value of the property KRISHNAMA CHARYAR *v* SRINIVASA AYYANGAR I. L. R., 4 Mad., 339

33 ——— Damages, Suit for —In determining the jurisdiction of the Court in a suit for damages, the amount claimed and not that eventually found due, must be taken at the valuation JOY DOORGA DASSEE *v* MANICK CHAND TAGOO

[10 W. R., 249

34 - Declaratory decree, Suit for—*Suit to establish right to attached property* *Held* that, in the case where a person has preferred a claim to property attached in the execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property the value of the subject matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree *Second Appeal No 520 of 1876, decided the 26th May 1876,* followed GULZARI LAL *v.* JADAUN RAI

[I. L. R., 2 All, 700

35. ——————— *Suit for declaration that property is liable to sale in execution of decree—Jurisdiction.*—In a suit to have it declared that certain property valued at R400 was liable to sale in execution of the plaintiff's decree for R1,200, *Held* that in this case the value of the property determined the jurisdiction, that it was immaterial

VALUATION OF SUIT—*continued*

1 SUITS—*continued.*

for purposes of jurisdiction KHUSHALCHAND MULCHAND v NAGINDAS MOTICHAND

[I L. R., 12 Bom., 675

24 —— Adoption, Suit to set aside —*Suit by reversioner—Jurisdiction*—For the purpose of determining the jurisdiction over a suit by a reversioner to set aside an adoption, the loss which would accrue to the adopted person, should the adoption be declared invalid, is the measure of the value of the subject matter of the suit. KESHAVA SANABHAGA v LAKSHMINARAYAN

[I. L. R , 6 Mad., 192

25 —— —— *Court Fees Act, s 7—Suits Valuation Act (VII of 1887) ss 4, 10*—The value, for the purposes of jurisdiction, of a suit to set aside an adoption is not the value of the property which may possibly change hands if the adoption be set aside, but the value put upon his plaint by the plaintiff. *Keshava Sanabhaga v Lakshmi Narayana, I L R , 6 Mad , 192*, dissented from SHEO DENI RAM v TULSHI RAM

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that *prima facie* ten times the amount of the annuity might be assumed to be its market value, as enacted for analogous agreements by s. 2, sch A, Act X of 1862. NARSINVACHARYA v. SVAMI RAYA CHARYA

[5 Bom , A. C , 65

27. —— Attachment, Suit to set aside—*Suit by trustees' deed given by insolvent for benefit of creditors*—The valuation for stamp duty of a suit brought by the trustees of an assignment by an insolvent trader for the benefit of his creditors to set aside an attachment by an execution-creditor should be calculated on the value of the lien claimed by the judgment creditor STEPHENSON v BAUMGARTNER . 3 Agra, 104

28. —— *Suit under Civil Procedure Code, 1882, s 283—Stamp—Possession—Court Fees Act, VII of 1870, sch II, art 17, cl 1*—When a party prefers a claim or makes any objection to the attachment of any property in execution of a decree but fails to establish it, and brings a suit under s. 283 of the Code of Civil Procedure (Act XIV of 1882) to establish his right to the property attached, his plaint is to be treated as falling under art. 17 cl 1, of sch II of the Court Fees Act, VII of 1870 and is chargeable with only a ten rupee stamp, notwithstanding that the plaintiff may pray in such a suit to be awarded possession *Jarrata v. Assan Sing, Judgments for 1881, p 121*, followed *Gunpatgir Guru Bhalagir v Gunpatgir, I. L. R., 3 Bom , 230*, distinguished. DHONDO SAKHARAM v GOVIND BABAJI . I. L. R., 9 Bom , 20

29. —— Attachment, Suit to set aside order removing—*Court Fees Act, VII of 1870, ss 6 and 12, and sch. II, art 17, cl. 1—Valuation by subordinate Court—Suit to re establish judgment debtor's right to property on removal of attachment*—Where, on the removal of an attachment at the instance of a third party the judgment-creditor brought a suit to establish the right of his judgment debtor to the property from which the attachment had been removed, and to get the summary order to remove the attachment set aside,—*Held* that the proper stamp on a plaint of that kind was R10 under s 6 and sch II, art 171, of the Court Fees Act, VII of 1870 VITAL KRISHNA v. BALKRISHNA JANARDAN I. L. R , 10 Bom., 610

30. —— Award, Suit to carry out.—*A suit to carry out an arbitration award need not be valued* KHODA BUKSH v MOWLA BUKSH

[14 W. R., 255

not the Court fee upon a plaint BHADHUR BHUGUT v MONOHUR BHUGUT I. L R., 10 Calc , 11

S. C PALUT BHAGUT v MONOHUR BHAGUT

[13 C L R , 171

32 — Charge on property, Suit to establish—*Madras Civil Courts Act 1873—Subject matter of suit*—For the purposes of jurisdiction (Madras Civil Courts Act 1873) the subject-matter of a suit to establish the validity of a charge upon property is when the property is in excess of the charge, the amount of the charge, when the charge is in excess of the property, the value of the property KRISHNAMA CHARIAR v SRINIVASA AYYANGAR I. L. R., 4 Mad., 330

33 —— — Damages, Suit for—In determining the jurisdiction of the Court in a suit for damages, the amount claimed and not that eventually found due, must be taken at the valuation JOY DOORGA DASSEE v MANICK CHAND BABOO

[16 W. R., 248

34. - Declaratory decree, Suit for—*Suit to establish right to attached property*

Held that, in the case where a person has preferred a claim to property attached in the execution of a decree, on the ground that such property is not liable to such attachment, and an order is passed against him, and he sues to establish his right to such property the value of the subject matter in dispute in such suit, for the purposes of jurisdiction, will be the amount of such decree *Second Appeal No 320 of 1876, decided the 26th May 1876*, followed. GULZARI LAL v. JADAUN RAI

[I. L. R., 3 All , 709

35. —— *Suit for declaration that property is liable to sale in execution of decree—Jurisdiction.*—In a suit to have it declared that certain property valued at R400 was liable to sale in execution of the plaintiff's decree for R1,200, *Held* that in this case the value of the property determined the jurisdiction, that it was immaterial

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

that the amount of the decree was higher than the limit of the Munsif's jurisdiction, and that the case was therefore triable by the Munsif. *Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 799,* distinguished. DURGA PRASAD *v.* RACHLA KUAR

[I. L. R., 9 All., 140

36. ——————— *Bengal Civil Courts Act (VI of 1871), s. 20—Value of the subject-matter in dispute—Civil Procedure Code (Act XIV of 1882), s. 283—Attached property, Suit to establish right to.*—In suits brought under s. 283 of the Civil Procedure Code to test the question whether a property which has been attached in execution is liable to pay the claim of the creditor, the amount which is to settle the jurisdiction of the Court is the amount which is in dispute, and which the creditor would recover if successful, *viz.*, the amount due to him, and not the value of the property attached, unless the two amounts happen to be identical. *Janki Das* v. *Badri Nath, I. L. R., 2 All., 698; Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 799; Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R., 4 Mad., 339;* and *Dayachand Nemchand* v. *Bemchand Dharamchand, I. L. R., 4 Bom., 515,* followed. MODHUSUDUN KOER *v.* RAKHAL CHUNDER ROY **I. L. R., 15 Calc., 104**

37. ——————— *Suit by claimant to attached property—Court Fees Act (VII of 1870)—Civil Procedure Code (1882), ss. 278 and 283.*—Where a claimant whose objection under s. 278 of the Code of Civil Procedure has been disallowed, brings a suit and makes the judgment-creditor, who was trying to execute the decree, the sole defendant to the suit, a claim for a declaration that the property under attachment was the plaintiff's property and not liable to attachment in execution of the decree of the defendant, is a claim for only one declaration, and for such purposes and in such a suit it is immaterial whether the claim is that the property is the plaintiff's and not liable to attachment or that the property is the plaintiff's as against the defendant's right to attach, and that the order of attachment should be cancelled. But where the person objecting under s. 278 of the Code brings his suit and makes not only the execution-creditor in the attachment proceedings, but also the judgment-debtor in those proceedings, parties to the suit, and asks for a declaration of the plaintiff's title to the property under attachment as against the judgment-debtor, and also asks for a declaration in denial of the judgment-creditor's right to bring that property to sale in execution of the judgment-creditor's decree, there are two substantial declarations asked for. MOTI SINGH *v.* KAUNSILLA

[I. L. R., 16 All., 308

38. ——————— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), ss. 19 and 21—Suit claiming property under the Civil Procedure Code, s. 283.*—When in a suit under s. 283 of Act XIV of 1882 the claimant-objector makes the judgment-debtor or his representative a party as defendant to the suit, the property attached must be regarded as the subject-matter of the suit, and the value of the suit within the meaning of ss. 19 and 21 of Act XII of 1887 must be the value of the property attached, whether such value exceeds or is less than the amount which is sought to be realized by the sale of property in execution of the decree. *Gulzari Lal* v. *Jadaun Rai, I. L. R., 2 All., 199; Durga Prasad* v. *Rachla Kuar, I. L. R., 9 All., 140; Krishnama Chariar* v. *Srinivasa Ayyangar, I. L. R., 4 Mad., 339;* and *Modhusudun Koer* v. *Rakhal Chunder Roy, I. L. R., 15 Calc., 104,* distinguished. *Mahabir Singh* v. *Behari Lal, I.L. R., 13 All., 320,* and *Madho Das* v. *Ramji Patak, I. L. R., 16 All., 286,* referred to. DWARKA DAS *v.* KAMESHAR PRASAD **I. L. R., 17 All., 69**

39. ——————— *Court Fees Act, s. 12, and sch. II, art. 17, cl. 3—Consequential relief—Appeal—Civil Procedure Code, 1859, s. 246.*—S. 12 of the Court Fees Act prohibits appeals on questions relating to valuation for the purpose of determining the amount of a fee, but does not prevent a Court of appeal from determining whether or not consequential relief is sought in a suit, so that it may determine under what class of cases the suit falls for the purposes of the Court Fees Act. A suit by a person against whom an order has been made, under s. 246 of Act VIII of 1859, disallowing his claim to the attached property, need not be valued according to the value of the property, but can be brought on a stamp of R10, under Act VII of 1870, sch. II, art. 17 (iii). CHUNIA *v.* RAM DIAL

[I. L. R., 1 All., 360

40. ——————— *Suit to stay butwara proceedings under Beng. Reg. XIX of 1814, after partition by private arrangement.*—An allottee, under a private partition, sued to say subsequent partition proceedings brought under Regulation XIX of 1814, and to have his possession confirmed. The defendants objected to the valuation of the suit and to the suit being heard by the Civil Courts, no proceedings having first been instituted before the revenue authorities. *Held* that such a suit should be considered to be one for a declaratory decree or for something in the nature of an injunction, and that therefore the plaint should not be stamped according to the value of the entire estate. JOYNATH ROY *v.* LALL PAHADOUR SINGH.

[I. L. R., 8 Calc., 126 : 10 C. L. R., 146

41. ——————— *Suit for declaration of title to paid offices—Withdrawal of claim to some of the offices—Office still claimed involving the right to the others.*—In a suit to declare title to four paid offices in a temple, the plaintiffs asked that the issues with regard to three of them should not be tried, but on cross-examination asserted right to them. It was found that the fourth office carried with it the right to the other three. *Held* that the plaintiffs were not shown to have relinquished their claim on the three offices for the purposes of the suit, but that, even if they had done so, the value of all

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

the four offices must be taken for the purposes of jurisdiction SUNDARA *v* SUBBA [I. L. R., 10 Mad., 371

42.——————— *Suit to obtain a declaratory decree—Suit to set aside a summary*

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Held that the Court fee payable on the plaint and

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cution of a decree was R10 in respect of each of the reliefs prayed DILDAR FATIMA *v* NARAIN DAS [I. L. R., 11 All., 365

43 ——————— *Pecuniary valua-*

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excess of the pecuniary jurisdiction of a District

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that the plea of *res judicata* failed *Per* MUTTUSAMI AYYAR, J —For the purposes of jurisdiction, the value of a suit for a mere declaratory decree must be taken to be what it would be if the suit were one for possession of the property regarding which the plaintiff seeks to have his title declared GANAPATI *v* CHATHU I. L. R., 12 Mad., 223

44 ——————— *Madras Civil Courts Act (Mad Act III of 1873), s. 12—Suit for declaration of membership of a tarwad—Valuation for the purposes of jurisdiction*—The plaintiff alleging that he was carnavan of the defendant's tarwad, sued in a Subordinate Court for a declaration that he was a member of it, adding no prayer for consequential relief It appeared that the tarwad property exceeded R20,000 in value, but that the proportionate share of each member, computed as on an equal division, was less than R900. The Subordinate Judge held that the suit was within the jurisdiction of a District Munsif and rejected the plaint *Held* that the value of the subject matter of the suit was the value of the whole tarwad property, and not the value of what the plaintiff's share would be on partition, the order therefore was wrong and should be set aside *Ganapati v. Chathu, I L R, 12 Mad, 223,* followed. IBRAYAN KUNHI *v* KOMAMUTTI KOYA [I. L. R., 15 Mad, 501

45.——————— *Bengal Tenancy Act, s 149—Suit by third party claiming rent paid into Court in rent-suit, Nature of—Title suit—Institution-stamp*—A suit by a third person under cl (3) of s. 149 of the Bengal Tenancy Act is not a title-suit, and need not be stamped as such. *Per* TOTTENHAM, J —Such suit is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit. JAGADAMBA DEVI *v* PROTAP GHOSE . . I. L. R., 14 Calc., 537

46. ——————— *Suit to establish right by reversal of deeds*—When a plaintiff only sues for declaration of his title to certain lands on reversal of the kobalas said to have been illegally executed by his father, he need not be compelled to value the case at the total of the consideration mentioned in those deeds SHEO GHOLAM SINGH *v.* BEJOYRAM PROTAB SINGH W. R., 1864, 317

47. ——————— *Plaint insufficiently stamped—Court Fees Act (VII of 1870), s. 12*—The law allows a plaintiff in some cases to rectify a mistake as to stamp duty, but this privilege is subject to qualification, and does not exist where the relief to be granted is altogether distinct from that originally sought. In such a case, the plaintiff should not be allowed to put an additional stamp on his plaint Where a plaintiff sued on a stamp of R10 for a declaration of his title to land worth R19 000, in the possession of the defendant, it was held that the suit could not be maintained and that the plaintiff was not entitled to put an additional stamp on the plaint and convert his suit into one for possession. CHOKALINGAPESHANA NAICKER *v* ACHIYAR . I. L. R., 1 Mad., 40

48. — *Court Fees Act (VII of 1870), s 4, and sch II, art 17, cls 3 and 6—Jurisdiction—Bombay Civil Courts Act (XIV of 1869), s 21*—A Subordinate Judge of the 2nd class has no jurisdiction to entertain a suit for the declaration of the plaintiff's title where the property in respect of which the declaration is sought exceeds R5 000 in value The law may lay down, for purposes of revenue, certain rules for the valuation of suits, but such valuation cannot be accepted as a criterion of the actual amount or value of the claim, upon which the jurisdiction of a Court depends. Whether a suit be merely to obtain a decree declaratory of the plaintiff's title to, or whether it be to establish his title coupled with a prayer for possession of, the rights of a deceased person the inheritance is the object in dispute The actual value of the estate to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff is the value of the subject matter BAI MAHKOR *v* BULAKHI CHAKER [I. L. R., 1 Bom., 538

49. ——————— *Court Fees Act*

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paid in respect of each of the alienatio s in question. DAIVACHILAYA PILLAI *v* PONNATHAL [I. L. R, 18 Mad., 450

50. ——————— *Court Fees Act (VII of 1870), s 7, cl 4 (c), sch II, art 17, cl. (iii)—Suit for a declaration that a decree obtained by defendant against plaintiff was null and void—Decree for declaration without consequential relief.*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

—A suit in which the only prayer is to have a decree set aside as null and void is a suit for a declaratory decree without consequential relief, and art. 17, cl. 3, and not s. 7, cl. 4, of the Court Fees Act (VII of 1870), is applicable to it. SHRIMANT SAGAJIRAO KHANDERAV *v.* SMITH . **I. L. R., 20 Bom., 736**

51. ———————— *Court Fees Act (VII of 1870), sch. II, art. 17, cl. (vi)—Civil Procedure Code, s. 539—Prayer for appointment of plaintiffs as trustees.*—A prayer in a plaint purporting to be a plaint under s. 539 of the Code of Civil Procedure that the plaintiffs themselves may be appointed trustees is not a prayer for possession requiring to be stamped at the value of the trust property, but is a prayer for relief falling within art. 17, cl. (vi), of the second schedule to Act VII of 1870. *Sonachala* v. *Manika, I. L. R., 8 Mad., 516; Delroos Banoo Begum* v. *Asghur Ally Khan, 15 B. L. R., 167;* and *Omrao Mirza* v. *Jones, I. L. R., 10 Calc., 599,* referred to and distinguished. THAKURI *v.* BRAMHA NARAIN . . . . **I. L. R., 19 All., 60**

52. ———————— *Court Fees Act (VII of 1870), sch. II, art. 17, cl. (vi)—Suit to remove a trustee of a religious endowment—Semble—* That a suit, under s. 14 of Act XX of 1863, against the superintendent of a religious endowment for misfeasance is a suit which, for the purpose of payment of Court-fees, falls within art. 17, cl. (vi), of the second schedule of Act VII of 1870. *Delroos Banoo Begum* v. *Ashgar Ally Khan, 15 B. L. R., 167; Sonachala* v. *Manika, I. L. R., 8 Mad., 516;* and *Omrao Mirza* v. *Jones, I. L. R., 10 Calc., 599,* referred to. MUHAMMAD SIRAJ-UL-HAQ *v.* IMAM-UD-DIN . . . . **I. L. R., 19 All., 104**

53. ———————— *Court Fees Act (VII of 1870), s. 7, cl. 4—Suit for declaration of right and for injunction.*—A suit for a declaration of right and for an injunction falls under s. 7, cl. 4, sub-cls. (c) and (d), of the Court Fees Act (VII of 1870). The valuation of the relief sought in such a suit rests with the plaintiff, and not with the Court. *A* sued *B* and *C* (1) for a declaration of his title to certain property, and (2) for an injunction restraining *C* from paying, and *B* from receiving, an allowance of R2,400 a year out of the income of the property in dispute. *A* valued each of the reliefs sought at R130, and affixed a Court-fee stamp of R20 to the plaint. The Court of first instance rejected the plaint as insufficiently stamped, holding that the claim for the injunction sought should have been valued at ten times the annual allowance paid by *C* to *B*, as provided by s. 7, cl. 2, of Act VII of 1870. On appeal to the High Court,—*Held* that the suit fell under s. 7, cl. 4, sub-cls. (c) and (d), of the Court Fees Act, and the plaintiff had a right to put his own valuation on the relief sought. SARDARSINGJI *v.* GANPATSINGJI . **I. L. R., 17 Bom., 56**

54. ———————— *Declaration sought that certain property was joint ancestral property and not liable to attachment in execution of a certain decree—Court Fees Act (VII of 1870), sch. II, art. 17, cl. 3, and s. 7, cl. 4.*—The plaintiffs specified in their plaint, as the reliefs sought by them,—(1) That it be declared by the Court that the property mentioned at foot is the joint ancestral property of the plaintiffs and not liable to attachment and sale in execution of the decree of the defendant 4, dated 4th December 1883, against the defendant 1. (2) That the costs of the suit be also awarded by the decree. The suit is valued with reference to the amount of the decree and the value of the property at R6,000. (3) That any other relief which the Court may think the plaintiffs entitled to may also be granted. *Held* that the suit should be deemed a suit for one declaratory decree only without consequential relief, and that consequently a Court-fee of R10 was sufficient. GOBIND NATH TIWARI *v.* GAJRAJ MATI TAURAYAN **[I. L. R., 13 All., 389**

55. ———————— *Suit to compel trustees to account—Court Fees Act, sch. II, art. 17, cl. (vi).*—The mere fact that the plaintiffs in a suit under s. 539 of the Code of Civil Procedure may ask for an account to be taken from the trustees and that the trustees may be compelled to refund moneys alleged to have been misappropriated by them, does not take the case out of the purview of art. 17, cl. (vi), of the second schedule to the Court Fees Act, 1870, and render the plaintiffs liable to pay an *ad valorem* Court-fee on that part of their plaint. *Thakuri* v. *Bramha Narain, I. L. R., 19 All., 60,* referred to. GIRDHARI LAL *v.* RAM LAL **[I. L. R., 21 All., 200**

56. ———————— *Sale in execution of decree—Suit by unsuccessful auction-purchaser for a declaration of right and for possession—Civil Procedure Code, 1882, s. 335—Court Fees Act (VII of 1870), s. 7.*—A purchaser of property at a sale held in execution of a decree obtained formal possession, but was resisted in obtaining actual possession by a person, who claimed to be the owner in possession of the property. An application made by the auction-purchaser under s. 335 of the Code of Civil Procedure was rejected, and the auction-purchaser accordingly filed a suit against the person in possession claiming a declaration of his right to the property, and to be put in actual possession thereof. *Held* that such a suit was properly stamped with a Court-fee stamp of R10. *Dhondo Sakharam Kulkarni* v. *Govind Babaji Kulkarni, I. L. R., 9 Bom., 20,* referred to. PIRYA DAS *v.* VILAYAT KHAN . **I. L. R., 22 All., 384**

57. ———————— **Deed, Suit to set aside**—*Suit for cancellation of bond—Value of subject-matter of suit—Jurisdiction.*—The value of the subject-matter of a suit for the cancellation of a bond is to be determined with reference only to the principal amount, and not that amount together with the interest payable thereon when the suit is instituted. GULAB RAI *v.* MANGLI LAL . **I. L. R., 6 All., 71**

58. ———————— *Appeal—Suit for cancellation of a document—Jurisdiction.*—The plaintiffs sued for the cancellation of a bond for the

VALUATION OF SUIT—*continued*

1 SUITS—*continued*

payment of R6 000 together with interest thereon at the rate of 4 per cent per mensem, alleging that they had executed such bond under the impression that it was a bond for the payment of R3 000, together with interest thereon at the rate of 1½ per cent per mensem whereas the defendants had fraudulently caused them to execute the bond in suit The plaintiffs paid into Court R3 000, together with

Judge was cognizable by him KALI CHARAN RAI *v* AJUDHIA RAI . I. L R, 2 All, 148

59 ——— *Deed prejudicing title to immoveable property* —In a suit to annul a sale-deed which prejudices the title of the plaintiffs to immoveable property, a stamp calculated on the consideration money mentioned in the sale deed is sufficient. THAKOOR PATHUK *v.* RAM SOOMRUN LAL 2 N. W, 433

60. *Suit to set aside sale deed as being forged* —A suit to set aside a false sale-deed was held to be sufficiently valued at the sum mentioned in that sale-deed THAKOOR PATUCK *v* RAMSOOMRUN LAL 1 N. W, 17: Ed. 1873, 16

61. *Court Fees Act*

Court by members of a Malabar tarwad to set aside

the payment, and the Subordinate Judge dismissed the suit *Held* that the order was erroneous, since the plaintiffs would not be gainers to the extent of the value of the property if they obtained a decree,

[I. L. R., 14 Mad., 169

62. — — *Court Fees Act, sch I, cl 1—Suit for cancellation of an agreement to sell—Ad valorem fee* —The plaintiff had executed an agreement to sell certain property in discharge of mortgages executed on his behalf during his minority. He now brought a suit alleging that the agreement had been extorted from him, and praying for a declaration that the agreement was not binding on him, and for any other relief "which the Court considers to be reasonable." *Held* that the plaintiff was bound to pay Court fees upon the value of his interest in the document sought to be invalidated. PARATHAYI *v.* SANKUMANI

[I. L. R., 15 Mad., 294

63 *Suit to cancel document on ground of fraud* —The plaintiff executed a document whereby he created a charge of R4 500 upon certain immoveable property In a suit to cancel the document upon the ground of fraud,—*Held* that the plaintiff valued his relief at R4 500, and that the District Munsif had no jurisdiction to try the suit NARAINA PUTTER *v* AYA PUTTER 7 Mad., 373

64. — *Suit for possession of property alienated Price stated in sale-deed* —In a suit for possession of a share of an undivided estate and to set aside a kobala by which the estate had been illegally alienated the plaintiff is not bound to value his claim according to the price stated in the kobala AUGOPURA CHOWDHRY *v* MEAH BIBEE 10 W R., 207

65. — —Deed, Suit to enforce registration of—*Court Fees Act (VII of 1870) s 7 cl 5 —Madras Civil Courts Act (Mad Act III of 1873) ss 12 14—Suit to enforce registration—Jurisdiction of Munsif* —Suit in the Court of a District Munsif to enforce registration of two instruments of gift The property purported to be conveyed was the same in each instrument and its value was found to be less than R2 500 but the earlier instrument comprised also an assignment of the right to manage a charity The latter instrument was found to have been executed in supersession of the former, and the District Munsif passed a decree directing its registration alone *Held* that the documents standing in the relation to each other of operative and superseded document the valuation of the suit for the purposes of jurisdiction was the value of the interest created by the operative document and that the District Munsif had jurisdiction to entertain the suit RAMAKRISHNAMMA *v* BHAGAMMA

[I. L. R., 13 Mad., 56

66. ——— Ejectment, Suit for—*Market value of tenant right* —Where a landlord claims to eject a tenant, he claims to recover the tenant's rights in the holding and the stamp duty chargeable on the plaint should be determined with reference to the market value of that right only AJOODHYA CHOWDRY *v* DAIBEE SINGH 3 Agra, Rev., 5

67. — — *Suit to contest claim of occupancy raiyat—Court Fees Act, 1870, s 7, cl II, and sch II, cl 5* —In a suit to eject a defendant as being a tenant at will, the Court fee upon the plaint or memorandum of appeal is 8 annas under sch II, cl 5, of Act VII of 1870 Cl. 11 (d) of s. 7 of that Act applies only to suits brought by a tenant to dispute the validity of his landlord's notice to quit. NURJAHAN *v* MARFAT MUNDUL

[11 C. L. R., 91

68. — ——— *Court Fees Act (VII of 1870), s 7, para 5—Suits Valuation Act (VII of 1887), s. 6—Jurisdiction—Suit to eject a tenant at fixed rates* —A suit to eject a tenant at fixed rates is a suit for the possession of land within the meaning of para. 5, s. 7 of the Court Fees Act, 1870, and the valuation of such suit for the purposes

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

of Court-fees and of jurisdiction is the value of the subject-matter of the suit, that is to say, of the tenant-right, not of the land itself nor of merely one year's rent. RAM RAJ TEWARI *v.* GIRNANDAN BHAGAT . . . I. L. R., 15 All., 63

69. ———— *Suit to have a lease to set aside and buildings erected by lessees demolished—Suit for possession of land and demolition of buildings erected thereon—Court Fees Act—Bengal Civil Courts Act, ss. 20, 22.*—Certain co-sharers of a village sued to have a lease of certain land, the joint undivided property of the co-sharers, which the other co-sharers had granted, set aside, and to have the building erected on such land by the lessees demolished, on the ground that such lease had been granted without their consent. They valued the relief sought at R100. The value of the buildings of which they sought demolition was R3,000. *B* sued *N* claiming *inter alia* possession of certain land and to have certain buildings erected thereon by the defendant demolished. *Held*, with reference to the above-mentioned suits, that in estimating their value for the purposes of the Court Fees Act, 1870, or of the Bengal Civil Courts Act, 1871, the value of the buildings which might have to be demolished should not be taken into account. JOGAL KISHOR *v.* TALE SINGH. BINDESHRI CHAUBEY *v.* NANDU

[I. L. R., 4 All., 320

70. ———— **Emoluments attached to office, Suit for**—*Court Fees Act, 1870, s. 7, cls. 2, 4—Claims for future emoluments—Jurisdiction—Madras Civil Courts Act, 1873, s. 12—Portion of claim struck out and plaint returned for presentation to inferior Court.*—In a suit filed in the Court of a Subordinate Judge, the plaintiff prayed, *inter alia*, for a decree for the payment, annually, of the emoluments attached to a certain office, or their value at a rate stated in the plaint. This portion of the claim he valued, under cl. 2 of s. 7 of the Court Fees Act, at ten times the amount of the value claimed for one year. The value of the claim thus stated exceeded the pecuniary limit of the jurisdiction of the District Munsif. The Subordinate Judge held that this portion of the claim was not actionable, inasmuch as the right to the emoluments was conditional upon services to be rendered, and did not fall under cl. 2 of s. 7 of the Court Fees Act, not being a fixed sum payable periodically, and therefore he held that the plaint was improperly valued, that the suit was not within his jurisdiction, and that the plaint should be returned to be presented to the proper Court. *Held* that this order was right. KRISHNAN *v.* REVI VARMA

[I. L. R., 8 Mad., 384

71. ———— **Interest**—*Court Fees Act (VII of 1870), s. 7—Claim for interest from institution of suit until payment—Future mesne profits.*—No additional stamp is required on account of the claim for interest from institution of the suit until payment. It stands on the same footing as future mesne profits, which do not fall under s. 7 of the Court Fees Act (VII of 1870). VITHAL HARI ATHAVLE *v.* GOVIND VASUDEO THOSAR

[I. L. R., 17 Bom., 41

72. ———— **Instalment-bond, Suit on.**—The stamp on a plaint on an instalment-bond should be estimated, not on the amount of the whole bond, but on the amount claimed in the suit. SUTTO BHAMA DOSSEA *v.* JAMEERUDDY KHAN

[4 W. R., S. C. C. Ref., 12

73. ———— **Khoti estate, Suit for recovery of**—*Act XXVI of 1867, sch. B, cl. 11—Amount of assessment.*—*Held* that a khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and that a suit for its recovery should be assessed at eight times the annual assessment under Act XXVI of 1867, sch. B, art. 11, note (*a*), Sp. Rule 1 for the Bombay Presidency. EX-PARTE VITHAL *alias* GOPAL GONESH BIVALKAR . 4 Bom., A. C., 148

74. ———— **Land, Suit for**—*Court Fees Act (VII of 1870), s. 7, art. 5, proviso—Stamp—Construction and applicability of the proviso—Valuation of suits for land in a talukhdari village—Talukhdar's jumma—Remission.*—*Per* WEST and NANABHAI, *JJ.*—The proviso to art. 5 of s. 7 of the Court Fees Act (VII of 1870) was clearly intended to provide a standard of valuation in the Bombay Presidency, not only for the comparatively rare cases of land forming part but not a definite share of an estate paying revenue to Government, but for all cases of suits for land. The theory being that all land is primarily liable to be rated or taxed for the public revenue, any sum not levied according to the appraisement made in order to show the proper amount of the land-tax may be regarded as a remission. In the case of a talukhdari village, the proprietor of which had, under a settlement with Government for a period of twenty-two years, agreed to pay a fixed annual jumma, or lump assessment instead of the full survey assessment for the whole village,—*Held* by a majority of the Full Bench that the difference in amount between the jumma and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to cl. (3) of the proviso to art. 5 of s. 7 of the Court Fees Act (VII 1870). *Per* BIRDWOOD, *J.*—The remission contemplated by cl. (3) of the proviso "is an express remission, and not a mere difference in amount between the actual assessment payable by a talukhdar and the survey assessment." The three clauses of the proviso seem to apply only to lands which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency; the first clause being applicable to lands settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to inam lands on which the whole or a part of the survey assessment has been expressly remitted. The talukhdars are not inamdars. They are landholders liable to pay a land-tax, but not under a survey settlement, such as is applicable

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

to lands for which provision seems to have been specially made in the proviso to art 5 of s. 7 of the Court Fees Act No part of the proviso therefore applies to a suit for the possession of lands in a talukhdari village Such a suit should be valued according to cl (*d*) of art 5 of s 7 of the Court Fees Act ALA CHELA *v.* OGHADBHAI THAKERSI

[I. L. R., 11 Bom., 541

BAVAJI MOHANJI *v* PUNJABHAI HANUBHAI

[I. L. R., 11 Bom., 550 note

75. ——— *Court Fees Act (VII of 1870), s 7, cl. 5 (c), (e)—Paramba in Malabar, Valuation of suit for—Suit for garden land or land paying no revenue* —On its appearing that a paramba in Malabar is not subject to land tax,

[illegible]

[I. L. R., 12 Mad., 301

76. ——— Manager, Suit to remove—*Court Fees Act, 1870, s 7—Suit to eject trustee—Jurisdiction—Specific Relief Act, s 42*—By an agreement between *S* and *M*, members of the same Hindu family, it was arranged that certain immoveable property dedicated to charitable uses by the family should be managed by *M*, subject to the supervision of *S*, and that *M* should render accounts to *S* and observe certain other conditions *S* sued *M* in the Court of the District Munsif, and prayed

[illegible]

jurisdiction. SOVACHALA *v* MANIKA

[I. L. R., 8 Mad., 516

77 ——— *Karnavan of Malabar tarwad—Madras Civil Courts Act, 1873,*

[illegible]

[I. L. R., 4 Mad., 314

78 ——— *Suit for removal of karnavan—Court Fees Act, 1870, sch II, art 17, cl. 6*—A suit for the removal of a karnavan of a Malabar tarwad on the ground of misfeasance is incapable of valuation and falls under s. 6, art. 17, sch. II of the Court Fees Act, 1870 GOVINDAN NAMBIAR *v.* KRISHNAN NAMBIAR

[I. L. R., 4 Mad., 146

VALUATION OF SUIT—*continued.*

1 SUITS—*continued.*

79 ——— *Act XX of 1863—Suit to remove managers of endowment from office—Court Fees Act, 1870, sch II, art 17.*—In a suit under Act XX of 1863 to remove the managers of an endowment from office, the subject matter was held to be one which did not admit of valuation, and the Court fee payable on its institution was the fixed fee of R10. VEERASAMI PILLAY *v* CHOKAPPA MUDALIAR . I. L. R., 11 Mad., 149 note

See SRINIVASA *v* VENKATA

[I. L. R., 11 Mad., 148

80. ——— *Madras Civil Courts Act, s 12—Court Fees Act, sch II, art 17, s 6—Suit to remove a karnavan—Valuation for jurisdiction*—Although, for the purposes of the Court Fees Act, a suit to remove the karnavan of a Malabar tarwad is incapable of valuation and subject to the fee prescribed by s 6 art. 17 of sch. II of that Act, yet, for the purposes of determining jurisdiction under s 12 of the Civil Courts Act, the right of management, which is the subject matter of the suit, must be valued If the value is estimated *bonâ fide* by the plaintiff, the Court should adopt it KRISHNA *v.* RAMAN I. L. R., 11 Mad., 266

81. ——— *Suit to remove a karnavan for mismanagement as de facto karnavan—Madras Civil Courts Act (III of 1873), s 13*—In a suit brought to remove the karnavan of a Malabar tarwad from office on the grounds of mismanagement of tarwad property, to the extent of more than R2,500, brought in the Court of a District Munsif —*Held* that for the purpose of jurisdiction the suit was not one for the recovery of tarwad properties, nor to be valued as such, but it was a suit for relief that was incapable of valuation and therefore was within the jurisdiction of the District Munsif KUNHAN *v* SANKARA

[I. L. R., 11 Mad., 76

82. ——— Mesne profits Suit for—*Denial of plaintiff's title*—In a suit for wasilat,

[illegible]

1 Hay, 370

83. ——— *Suit for possession and mesne profits*—Where a suit for mesne profits is united with one for possession no separate stamp fee is necessary in respect of mesne profits. SYEDUN *v.* ALLAH AHMED . W R., 1864, 327

84. ——— Mortgage—*Court Fees Act (VII of 1870), s. 7, cl 1—Suit by the mortgagee against the heir of the mortgagor for recovery of the mortgage debt by sale of mortgaged and other property—Suit for money*—A suit instituted by the mortgagee against the heir of the original mortgagor, to have the mortgage-debt paid by sale not exclusively of the mortgaged property, but also of all the other property in the hands of such heir liable for the debts of the original mortgagor, is virtually

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

a suit for money, and should be valued, not at the principal debt, but the entire amount including interest. KASHINATH BALLAL *v.* GANPATRO AMRITESHVAR JOSHI . . I. L. R., 18 Bom., 696

85. ———— *Court Fees Act (VII of 1870), s. 7, cls. 5 and 9—Suit against mortgagee for recovery of mortgaged property.*—Cl. 9, s. 7 of the Court Fees Act, applies not only to suits for redemption of mortgaged properties, but to all suits against the mortgagee for the recovery of the mortgaged properties, and whatever may be the actual amount due to the mortgagee, the Court-fee will always be upon the amount appearing in the bond. KORAMAN SINGH *v.* NORMAN COCKELL [1 C. W. N., 670

86. ———— Partition, Suit for—*Madras Civil Courts Act, s. 12—Jurisdiction—Subject-matter of suit.*—In suits for partition, the value of the property of which the plaintiff claims a share, and not the value of the share claimed, determines the jurisdiction of the Court under s. 12 of the Madras Civil Courts Act, 1873. VYDINATHA *v.* SUBRAMANYA . . I. L. R., 8 Mad., 235

87. ———— *Suit for partition of share of land.*—In a suit for ascertainment, partition, and delivery to the plaintiff, of a share of certain land, the suit should be valued at the amount of the value of the whole estate. *Vydinatha* v. *Subramanya, I. L. R., 8 Mad., 235,* followed. NAGAMMA *v.* SUBRA . I. L. R., 11 Mad., 197

88. ———— *Court Fees Act (VII of 1870)—Suit for partition and for possession of share.*—The stamp on a suit for partition and possession of the plaintiff's share of joint family property must be an *ad valorem* one on the value of the share. BALVANT GANESH *v.* NANA CHINTAMON [I. L. R., 18 Bom., 209

89. ———— *Suit for partition of family property—Valuation for purposes of jurisdiction—Court Fees Act (VII of 1870), s. 7, cl. (iv) (b)—Suits Valuation Act (VII of 1887), s. 8.*—In a suit by a member of a joint Hindu family praying for a partition of the family property and for the delivery to the plaintiff of his share, the value of the suit for the purposes of jurisdiction is the amount at which the plaintiff values his share. VELU GOUNDAN *v.* KUMARAVELU GOUNDAN [I. L. R., 20 Mad., 289

90. ———— *Suits Valuation Act (VII of 1887), s. 8—Jurisdiction of Subordinate Judge—Valuation of a suit for partition.*—In a suit for partition of certain property, the value of the whole property sought to be divided was over R5,000. Plaintiff valued his share at R250, and paid Court-fees on this amount. The suit was filed in the Court of a Subordinate Judge of the first class. *Held* that the value of the subject-matter of the suit could not be held to be more than R250, so that the suit ought to have been filed in the Court of the second class Subordinate Judge. MOTIBHAI *v.* HARIDAS . I. L. R., 22 Bom., 315

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

91. ———— *Hearing fee, Calculation of—Market value of property.*—The ordinary rule for assessing the hearing fee according to the market value of the property in suit is not applicable to a suit for partition, and the Court in each case ought to fix the amount of such fee. Generally speaking, the value of the suit is the difference between the value after partition of the plaintiff's share which he requires to be partitioned and the value of the same share not partitioned. KIRTEE CHUNDER MITTER *v.* ANNATH NATH DEB [13 C. L. R., 253

92. ———— *Suit for division of lands according to established custom.*—A co-owner of village lands sued in 1861 to have them divided among the villagers according to a custom (last observed in 1835) that at the expiration of every twelve years the lands should be redistributed by lot among the co-owners, and to have two of the shares delivered to him as one of such co-owners. In 1851 another co-owner had, in a suit to which some only of the present defendants were parties, obtained a decree for the periodical allotment of the lands; and in 1853 such decree, which clearly recognized the existence and validity of the custom, was affirmed on appeal. *Held* that the plaintiff need not pay an institution fee on the aggregate amount of the value of all the sharers in the village, and that the stamp on the plaint need only be proportioned to the value of the property actually sued for. VENKATASVAMI NAYAKKAN *v.* SUBBA RAU. SANKARA SUBBAIYAN *v* SUBBA RAU . . . . . 2 Mad., 1

93. ———— *Jurisdiction—Subject-matter of suit—Act XIV of 1869, s. 25.*—What *primâ facie* determines the jurisdiction of a Court is the claim, or subject-matter of the claim, as estimated by the plaintiff; and the determination having given the jurisdiction, the jurisdiction itself continues, whatever the event of the suit. And this is so notwithstanding a *bonâ fide* error in the estimate made by the plaintiff, but plaintiff cannot oust the Court of its jurisdiction by making unwarrantable additions to the claim which cannot be sustained, and which there is no reasonable ground for expecting to sustain. The subject-matter of a claim, within the meaning of s. 25 of Act XIV of 1869, is the specific thing sought by the plaintiff. In a partition suit, where the plaintiff seeks for a division and separate possession of his share in joint property, it is the share so claimed which is the subject-matter of the claim, and not the whole of the joint property which is sought to be divided. LAKSHMAN BHATKAR *v.* BABAJI BHATKAR [I. L. R., 8 Bom., 31

94. ———— *Bengal, N.-W. Provinces and Assam Civil Courts Act (XII of 1887), s. 21—Court Fees Act (VII of 1870), s. 7, cl. 4—Suits Valuation Act (VII of 1887), ss. 7, 8, and 11—Jurisdiction, Valuation for purposes of.*—For purposes of jurisdiction, the words "value of the original suit" in s. 21 of Act XII of 1887 are, in partition suits, to be taken to mean the

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

value of the property in suit, and this is the valuation by which the Courts should be guided in such suits. *Kirty Churn Mitter v Aunath Nath Deb, I L R, 8 Calc, 757* followed. The Court Fees Act (VII of 1870), s. 7, cl 4, does not contemplate that a plaintiff should assign an arbitrary value to the subject-matter of the suit, and the provisions of the Suits Valuation Act (VII of 1887), ss 7, 8, and 11, indicate that this was not the intention of the Legislature. BOIDYA NATH ADYA v MAKHAN LAL ADYA I. L. R, 17 Calc., 680

95. ——————— *Stamp in partition suit*—The plaintiff brought a suit to have 99 items of property partitioned The plaint bore a Court-fee stamp of R10 The defendants admitted that three of the properties were ancestral and joint, but as to the other items the second defendant stated that they were the self acquired property of her deceased husband, and contended that the plaint was insufficiently stamped, as the object of the suit was to obtain a declaration of title to and possession of, properties in which the plaintiff had no interest An issue was raised on this point, and on this issue the Subordinate Judge allowed the objection and rejected the plaint. On appeal,—*Held* by PETHERAM, *C J*, and NORRIS, *J*, that the plaint was sufficiently stamped *The only relief prayed for* was partition and for the purposes for the stamp, the cause of action which is stated in the plaint, and that only, must be looked at MOHENDRO CHANDRA GANGULI v ASHUTOSH GANGULI [I. L. R., 20 Calc, 762

96 ——————— *"Subject-matter in dispute"—Jurisdiction of Munsif—Claim for partition of share less than R1,000 in family property exceeding R1 000*—In a suit instituted in the Court of a Munsif by a member of a Mahomedan family to have her share of the family property partitioned, the value of the plaintiff's share was found to be less than R1,000, and the value of the whole family property exceeded R1,000 *Held* that the subject-matter in dispute in the suit, within the meaning of s. 20 of the Bengal Civil Courts Act (VI of 1871), was the share which the plaintiff asked to have partitioned, that it was immaterial that that share was at the date of the suit a portion of family property which exceeded R1,000 in value, and that the Munsif therefore had jurisdiction to hear the suit *Vydinatha v Subramanya, I L R, 8 Mad, 235; Kirty Churn Mitter v Aunath Nath Deb, I L R, 8 Calc, 757, Khoorshed Hossein v Nubbee Fatima, I. L R 3 Calc, 551,* and *Ram Chandra Narayan v. Narayan Mahadev, I L R, 11 Bom, 216* distinguished. HIKMAT ALI v WALI UN NISSA I. L. R, 12 All, 506

97 ——————— *Value of share on partition—Subject matter of suit—Munsif Jurisdiction of.*—Plaintiff sued in the District Court for partition of a one seventh share purchased by him in an undivided agrahara m, of which the total value was about R10 4.0, and obtained a decree *Held* that the subject matter of the suit was the

. . . the agra- . . . been filed . . . v *Subra-* . . . RAMAYYA . . . I. L. R., 13 Mad., 25

98 ——————— *Madras Civil Courts Act (Mad Act III of 1873), s 12 Valuation of relief—Suits Valuation Act (VII of 1887), s 11—Suit by a purchaser at a sale in execution of decree for partition—Jurisdiction of Munsif and Subordinate Judge*—The purchaser at a Court-sale of eight pangus out of an estate of 28½ pangus sold them to the plaintiff The whole estate was worth more than R2 500, but the eight pangus sold to the plaintiff were worth less than that sum. The plaintiff brought this suit in a Subordinate Judge's Court against his vendor and certain persons, who were in possession of, and claimed to be entitled by right of purchase to the whole estate, for partition and possession of his eight pangus. It was found that the plaintiff was entitled to the eight pangus purchased by him as against the defendants *Held* (1) that the value of the share sought to be recovered, and not the entire value of the property, should be taken to be the value of the suit for the purpose of determining jurisdiction and that the suit was within the pecuniary limits of the jurisdiction of a District Munsif (2) that since the disposal of the suit had not been prejudicially affected, the suits Valuation Act s 11, was applicable and the decree of the Subordinate Judge should be confirmed. *Quære*—Whether the Subordinate Judge has not concurrent jurisdiction with a District Munsif in suits less than R2,500 in value *Krishnasami v Kanakasabai, I L R, 14 Mad, 183* NARAYANAN v NARAYANAN I. L. R., 15 Mad., 60

99 ——————— *Suits Valuation Act—Act VII of 1887, s 8—Order by Appellate* . . .

District Munsif to recover his share of family property The amount of the property exceeded, but the amount of the share claimed was within the pecuniary limit of the jurisdiction of the District Munsif who passed a decree for the plaintiff On appeal it was held that the suit was not within the jurisdiction of the Court The decree accordingly was reversed, and it was ordered that the plaint be returned for presentation to the proper Court. On second appeal to the High Court,—*Held* that plaintiff's remedy was not by way of a second appeal, but he should have proceeded under Civil Procedure Code, s. 588. The petition of appeal having been allowed to be amended in accordance with this ruling—*Held* that the Court of the Munsif had jurisdiction to entertain the suit. CHINNASAMI PILLAI v KARUPPA UDAYAN I. L. R, 21 Mad, 234

100 **Partnerships**—*Suit for share of profits of partnerships after winding up and adjustment of accounts—Contract Act, s 265—Court Fees Act (VII of 1870), s 7, cl. 4—Suits Valuation*

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

Act (VII of 1887), s. 8—Jurisdiction of Munsif.—In suits brought for the several shares of the plaintiffs in the profits of a partnership after the partnership had been determined and an adjustment of accounts made,—*Held* (NORRIS and BANERJEE, *JJ.*, RAMPINI, *J.*, dissenting) that, under the provisions of s. 7, para. iv, cl. (*f*), of the Court Fees Act (VII of 1870), and s. 8 of the Suits Valuation Act (VII of 1887), the suits were properly brought in the Munsif's Court. *Ladubhai Premchand* v. *Revichand Venichand, I. L. R., 6 Bom., 143,* followed. DHANI RAM SHAHA *v.* BHAGIRATH SHAHA

[I. L. R., 22 Calc., 682

101. ———— Possession, Suit for—*Suit by auction-purchaser—Procedure.*—In a suit for possession by an auction-purchaser, where plaintiff valued his claim at what he paid for the property,—*Held* that the valuation was *primâ facie* not incorrect, and, until rebutted by evidence and the result of a proper inquiry, should be accepted as correct. If the valuation was doubted, an enquiry should have been instituted under Act XXVI of 1867. SOOBUDRA *v.* RAM PROKASH SINGH . . 16 W. R., 5

102. ———— *Suit after foreclosure—Court Fees Act, s. 7, cl. 9.*—Where a suit for possession is brought after a decree for foreclosure has been obtained, the valuation of such a suit, in so far as the jurisdiction of the Court is concerned, is not to be calculated according to the scale laid down in the Court Fees Act, s. 7, cl. 9. AHOLLYA BAI DEBIA *v.* SHAMA CHURN BOSE

[1 C. L. R., 473

103. ———— *Civil Procedure Code, 1859, s. 229, Procedure under—Fresh suit—Jurisdiction.*—For the purpose of jurisdiction, a claim under s. 229 of Act VIII of 1859 is a fresh suit and not a continuation of the suit in which the claim is made; so that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim. MUTTAMMAL *v.* CHINNAN GOUNDEN

[I. L. R., 4 Mad., 220

104. ———— *Madras Civil Courts Act (III of 1873), s. 1—Jurisdiction—Suit to recover share of inheritance—Subject-matter of suit.*—The plaintiff sued to be declared an heir to a deceased Mahomedan and to recover her share of the inheritance, the share claimed being less than R2,500, while the value of the whole estate exceeded that amount. *Held* that the suit was to be valued according to the share, and not according to the value of the whole estate, and the suit therefore was within the jurisdiction of a District Munsif. KHANSA BIBI *v.* ABBA . . . . I. L. R., 11 Mad., 140

105. ———— *Suit for possession of share of estate and to set aside deed.*—In a suit for possession of a share of an undivided estate, and to set aside a kobala by which the estate had been illegally alienated, plaintiff is not bound to value his claim according to the price stated in the kobala. AUGOPURA CHOWDHRY *v.* MEAH BIBEE

[10 W. R., 207

106. ———— *Suit for possession and declaration of title.*—Where a suit is for recovery of possession (with mesne profits) of a certain portion of land, and for a declaration of right in respect of the remainder, its valuation should not include the value of the latter, which is only nominal, and requires a stamp of R10. HURRO NATH BHUTTACHARJEE *v.* HARVEY . . 25 W. R., 23

107. ———— Suit for possession and mesne profits—*Value of the original suit—Bengal, N.-W. Provinces, and Assam Civil Courts Act (XII of 1887), s. 21.*—In a suit for possession and mesne profits, the value of the original suit for the purposes of s. 21 of Act XII of 1887 depends not merely upon the property sought to be recovered, but also upon the value or amount of the profits recoverable. MOHINI MOHAN DAS *v.* SATIS CHANDRA ROY

[I. L. R., 17 Calc., 704

108. ———— *Court Fees Act (VII of 1870), ss. 7 and 11—Mesne profits from the institution of suit, Claim as to—S. 169 of the Code of Civil Procedure (Act VIII of 1859)—S. 50, cl. (f), and s. 211 of the Code of Civil Procedure (Act XIV of 1882).*—The plaintiff in his plaint prayed for mesne profits only from the institution of his suit till the property in question was restored to him, and the decree awarded him those profits and directed that they should be determined in execution. After the property was restored to the plaintiff, he applied, in execution of the decree, to have the amount of mesne profits determined, which being done, a question arose as to whether the plaintiff could proceed to further execute his decree without paying the Court-fee on the amount so awarded in execution. *Held* that no Court-fee was required. S. 11 of the Court Fees Act (VII of 1870) applies to a claim for mesne profits for which an amount can be and has been claimed by the plaint, and in respect of which some fee has been actually paid. RAMKRISNA BHIKAJI *v.* BHIMABAI

[I. L. R., 15 Bom., 416

MAIDEN *v.* JANAKIRAMAYYA

[I. L. R., 21 Mad., 371

109. ———— Pre-emption, Suit for.—In a suit for pre-emption, the valuation of the property sued for is to be calculated at the market value for which it would sell, and not at ten times the value of the sudder jumma. ANJUD SINGH *v.* DEPUN SINGH

[3 B. L. R., Ap., 143 : 14 W. R., 238 note

NAUNHOO SINGH *v.* TOFAN SINGH

[14 W. R., 228

110. ———— *Jurisdiction—Bengal Civil Courts Act (VI of 1871), s. 20.*—In a pre-emption suit, the subject-matter is the right of pre-emption, the value of which, and not that of the

VALUATION OF SUIT—*continued.*

1 SUITS—*continued.*

property itself, determines the question of jurisdiction under s. 20, Act VI of 1871. NAUN SINGH v. RASH BEHARY SINGH I. L. R., 13 Calc., 255

111 ——————— *Court Fees Act (VII of 1870), ss 5 and 7, cls (5) and (6)—Suit for pre-emption of separate plots of land not being a fractional share of a revenue-paying unit.—Held* that in a suit for pre-emption in respect of separate plots of land which did not constitute any definite fraction of a distinct revenue-paying area and were [illegible]

[illegible] is for a definite fractional share, on five times the Government revenue. REFERENCE UNDER THE COURT FEES ACT, 1870, s 5

[I. L. R., 16 All., 493

[illegible]

land a *pro formâ* defendant [illegible] *Held* that the value of the subject matter of the suit was not the market value of the land, but the amount of the mortgage money KUBAIR SINGH v. ATMA RAM

[I. L. R., 5 All., 332

113 [illegible]
Courts [illegible]
ments [illegible]
SAMI [illegible]
of mor[illegible] be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be calculated in ascertaining the "value of the subject-matter of the suit" for the purposes of jurisdiction under s 1[illegible] of the Madras Civil Courts Act. *Per* TURNER, C J. (MUTTUSAMI AYYAR, J., concurring) – By the custom of Malabar, a condition is attached to all kanom demises that the mortgagor shall pay the value of improvements made by the mortgagee during the term of the demise before he can redeem, and the repayment of the sums spent in improvements is thus secured by the mortgage in the same manner as the repayment of the principal advanced, and must be calculated in determining the value of the subject matter of the suit for the purpose of jurisdiction ZAMORIN OF CALICUT v. NARAYANA . . I. L. R., 5 Mad., 284

ANONYMOUS I. L. R., 5 Mad., 287 note

114. ——————— *Jurisdiction of Munsif*—The integrity of a joint usufructuary [illegible]

[illegible] redeemed The value of the mortgagee's right *qua* such share was under R1 000. The mortgagee set up as a defence to such suit that a bond, under which a sum exceeding R1 000 was due had been tacked to the mortgage, and that, until such sum had been satisfied, the plaintiff could not recover possession of his share *Held* on the question whether the Munsif had jurisdiction that the value of the subject-matter of the suit was the value of the mortgagee's right *qua* the plaintiff's share, and as the value of such right did not exceed R1 000 even if it were held [illegible]

[illegible] *Singh* v *Kallu, I L R, 2 All, 778,* followed BAHADUR v. NAWAB JAN I. L. R., 3 All., 822

115 ——————— *Joint mortgage—Jurisdiction—Court-fee—Valuation of suit—"Subject matter in dispute"—Act VII of 1870, s 7, art (ix)—Act VI of 1871, s 20—Statute, Construction of*—A deed of mortgage was executed by *P*, *T*, and *S* for R4,000 *A*, the purchaser of the share of *S*, brought a suit for recovery of possession of one-third of the mortgaged property against the mortgagees who had purchased the shares of *P* and *T*, the other mortgagors. *Held* by the Full Bench with reference to s. 7, art (ix), of the Court Fees Act (VII of 1870), that the defendants-mortgagees having bought up the equity of redemption of two of the mortgagors, and *pro tanto* extinguished their mortgage-debt and so by their own act empowered the plaintiff to sue for redemption of one-third of the property, the principal money now secured as between them and the plaintiff must now be regarded as one-third of the original mortgage amount,—namely, R1 333 5-4, more particularly as fiscal enactments should, as far as possible, be construed in favour of the subject *Balkrishna Dhonio v. Nagvekar, I L R., 6 Bom, 324,* referred to. *Held* also, with reference to the terms of s. 2 of the [illegible]

[illegible] terms of the plaint it was obvious that in the present case the subject matter in dispute was R1,333 5-4, the one third of the original mortgage sum of R4,000, and that it was therefore beyond the limits of the Munsif's pecuniary jurisdiction *Per* [illegible] le [illegible] diction to the highest Court. Observations by MAHMOOD, J., as to the subject matter of suits for the redemption of mortgages, and the mode in which the value of such subject-matter should be calculated for purposes of jurisdiction. AMANAT BEGAM v. BHAJAN LAL I. L. R., 8 All., 438

116.——————— *Usufructuary mortgage—Overvaluation of suit, Effect of Jurisdiction*—The mere fact that a suit has been overvalued does not deprive the Court in which it is brought of jurisdiction if the overvaluation was *bonâ fide* and had not the effect of altering the appellate jurisdiction, that is to say, did not cause the appeal from the judgment of the Court of first instance to lie to a different Court from that to which it would

VALUATION OF SUIT—*continued.*

1. SUITS—*continued.*

have lain had the suit been instituted in a Court having a more limited jurisdiction. RAJENDRO LALL GOSSAMI *v.* SHAMA CHURN LAHORI

[I. L. R., 5 Calc., 188
4 C. L. R., 417

117. ——— *Suit to redeem mortgaged land paying revenue to Government.*—The stamp duty payable under Sch. B of Act X of 1862, on a suit to redeem mortgaged land paying revenue to Government, should be calculated on the sum for which the land is mortgaged, and not on the market value of such land. NANDRAM SUNDARJI NAIK *v.* BALAJI VITHAL . **5 Bom., A. C., 153**

118. ——— *Suit by kanom holder against jenmi and holders of prior kanom in possession.*—A suit brought by a kanom-holder against the jenmi and the holders of a prior kanom in possession, to recover possession of the lands, may be properly treated, for the purpose of jurisdiction, as a suit for land, although it results in a decree for redemption, and, if regarded as a redemption suit, would be cognizable by a Court of subordinate jurisdiction. MARAKAR *v.* PARAMESWARAN

[I. L. R., 6 Mad., 140

119. ——— *Court Fees Act (VII of 1870)—Dekkan Agriculturists' Relief Act (XVII of 1879), Ch. II.*—The valuation of a suit for redemption for purposes of jurisdiction is the amount remaining due on the mortgage, or claimed on it by the mortgagee. It is that amount, and the right connected with it, which is the usual subject of contention in a mortgage-suit. *Per* BIRDWOOD, J.—The rules laid down in the Court Fees Act (VII of 1870) are not to be taken as necessarily a guide in determining the value of the subject-matter of a suit for purposes of jurisdiction. RUPCHAND KHEMCHAND *v.* BALVANT NARAYAN

[I. L. R., 11 Bom., 591

120. ——— *Dekkan Agriculturists' Relief Act (XVII of 1879), Ch. II, s. 3—Appeal—Jurisdiction.*—In a redemption-suit the valuation of the subject-matter does not depend on the value of the mortgaged property. Where the mortgage itself is denied, and the mortgagee does not say what he claims in respect of the mortgage-debt, the amount found to be remaining due on the mortgage, if any amount was due at the date of the suit, would represent the true valuation of the subject-matter of the suit. *Rupchand Khemchand* v. *Balvant Narayan, I. L. R., 11 Bom., 591*, followed. The plaintiffs, who were agriculturists, sued to redeem certain lands, alleging that they had been mortgaged to the defendants' father for R50, and that the debt had been satisfied out of the rent and profits of the mortgaged property. The defendants denied the alleged mortgage. The Subordinate Judge found that the mortgage was proved, and the mortgage-debt had been more than paid off out of the profits of the property in dispute. He therefore passed decree awarding possession to the plaintiffs. Against this decree the defendant appealed. The District Court found that the mortgage was not established and reversed the decree of the Subordinate Judge. *Held*, on second appeal, that no appeal lay to the District Court from the decision of the Subordinate Judge. As the Subordinate Judge found that no sum remained due on the mortgage, and as the original advance was alleged to have been R50, the suit was governed by the provisions of Ch. II of the Dekkan Agriculturists' Relief Act (XVII of 1879). AMRITA BIN BAPUJI *v.* NARU BIN GOPALJI SHAMJI

[I. L. R., 13 Bom., 489

121. ——— *Suit on mortgage—Suit for redemption of mortgage—Value of subject-matter of suit.*—In a suit upon a mortgage, where the sum due upon the mortgage is unknown, what determines the value of the subject-matter of the suit is the amount of the mortgage, the rights connected with which are the subject of contention. RAM CHANDRA BABA SATHE *v.* JANARDHAN APAJI

[I. L. R., 14 Bom., 19

122. ——— *Court Fees Act (VII of 1870), s. 7—Suit for redemption of mortgage.*—In a suit for the redemption of a kanom the institution fee must be computed on the kanom debt as it originally stood. REFERENCE UNDER COURT FEES ACT, S. 5 . **I. L. R., 14 Mad., 480**

123. ——— *Court Fees Act (VII of 1870), ss. 7 (ix) and 17—Redemption suit against mortgagee in possession—Arrears of rent covenanted for, to be deducted from the mortgage amount.*—In a redemption suit against a mortgagee in possession, when the mortgagee has not paid rent which has been stipulated for, and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the mortgage amount,—*Held* that the court-fee should be computed according to the principal sum expressed to be secured by the mortgage. EACHARAN PATTER *v.* APPU PATTER

[I. L. R., 19 Mad., 16

124. ——— *Suit to redeem mortgage and for rent—Madras Civil Courts Act (Mad. Act III of 1873), s. 14.*—The karnavan of a Malabar tarwad, having the jenm title to certain land and holding the uraima right in a certain public devasom to which other land belonged, demised lands of both description on kanom to the defendants' tarwad, and subsequently executed to the plaintiff a melkanom of the first-mentioned land and purported to sell to him the jenm title to the last-mentioned land. In a suit brought by the plaintiff to redeem the kanom and to recover arrears of rent,—*Held* that, for the purposes of determining the jurisdiction of the Court of appeal, the value of the subject-matter of the suit was the aggregate value of the two heads of relief. KONNA PANIKAR *v.* KARUNAKARA . . . . **I. L. R., 16 Mad., 328**

125. ——— **Restitution of conjugal rights, Suit for**—*Burma Courts Act, 1875, s. 49—Appeal.*—The proviso in s. 49 of the Burma Courts Act amounts to an express declaration that it is a condition precedent to the right of appeal from the Recorder's Court that the suit shall be one which has an

VALUATION OF SUIT—*continued.*

1 SUITS—*concluded*

amount or value capable of being estimated in money, and that that amount or value must fall within certain specified limits. A suit for the restitution of conjugal rights is incapable of being valued, and no appeal therefore in such a suit will lie under the Burma Courts Act from a decision of the Recorder of Rangoon GOLAM RAHAMAN *v* FATIMA BIBI

[I. L. R., 13 Calc., 232

126 ———— A suit for restitution of conjugal rights is not one to which any special money value can be attached for the purposes of jurisdiction. *Golam Rahman* v *Fatima Bibi, I L R, 13 Calc, 232,* followed MOWLA NEWAZ *v.* SAJIDUNNISSA BIBI I. L. R., 18 Calc., 376

127. ———— Sale, Suit to set aside—*Sale in execution of decree—Value of property sold*—In a suit to set aside an auction sale, the plaint must be stamped as if the suit were for the recovery of the property. DEAPU CHOWDHRY *v* ISHAN CHUNDER DAS . 9 C. L. R., 231

128 ———— Share of land, Suit for—*Suit relating to land—Rental of share*—In valuing a suit relating to a share of land, the rental of the share is to be the criterion of the stamp RAM BUKSH THAKOOR *v* AJOODHYA LAL

[2 W. R., Mis, 45

129. ———— Waste lands, Suit for—*Act XXIII of 1863 (Waste Lands), s 5, Suit under*—In a suit under s 5, Act XXIII of 1863, by a claimant to waste land proposed to be sold or otherwise dealt with on account of Government, or by an objection to the sale or other disposition of such land, the plaint must be on a stamp of R100 GREESH CHUNDER ROY *v* COLLECTOR OF SYLHET

[7 W R, 349

2 APPEALS

130 ———— Question of valuation—*Appellate Court, Power of—Act XXIII of 1867*—An Appellate Court has no power to set aside a decision arrived at by the Court of first instance as to the valuation of the property in suit. MAFIZUDDIN *v* KARIMUNNISSA BIBEE

[6 B. L. R., Ap, 11: 14 W. R., 381

ISHAN CHANDRA MOOKERJEE *v* LOKENATH ROY

[6 B. L. R., Ap, 12; 14 W. R., 451

131 ————*Bengal, N-W P, and Assam Civil Courts Act (XII of 1887), s 21, cl (a)—"Value of the original suit"—"Amount or value of the subject matter of the suit"—District Judge, Jurisdiction of—General Clauses Act (I of 1887), s 3, cl 13*—For the purpose of determining the proper Appellate Court in a civil suit, what is to be looked to is the value of the original suit, that is to say, the "amount or value of the subject-matter of the suit." Such "amount or value of the subject matter of the suit" must be taken to be the value assigned by the plaintiff in his plaint, and not the value as found by the Court, unless it appear that, either purposely or through gross negligence, the true value of the suit had been altogether misrepresented in the plaint MAHABIR SINGH *v* BEHARI LAL

[I. L. R., 13 All., 320

132. ———— *Ground of appeal going to the whole of the respondents' decree.*—Where one of several appellants takes a ground of appeal which goes to the root of the respondent's case and which, if successful, would deprive the respondent of his decree as a whole, and not merely of his interest in it *quoad* the particular appellant, the Appellate Court is justified in refusing to hear such [illegible]

[illegible] I. L. R., [illegible]

133 ———— —*Suit of the nature cognizable in Courts of Small Causes*—For the purposes of an appeal, whether from a decree in a regular suit or from an order passed in execution of such decree, the pecuniary test of jurisdiction is the valuation of the original suit in which the decree was passed, and not merely the actual amount affected by the order sought to be appealed. NAZAR HUSAIN *v* KESRI MAL . I. L. R., 12 All., 581

134 ———— *Jurisdiction of District Judge—Valuation put by plaintiff in his plaint—Amount awarded by decree—Bengal, N-W P, and Assam Civil Courts Act (XII of 1887)*—The pecuniary jurisdiction of a Civil Court on its appellate side is ordinarily speaking, governed by the value stated by the plaintiff in his plaint, and if a suit, having regard to the valuation in the plaint, is within the jurisdiction, such jurisdiction is not ousted by the Court finding that a decree for a sum exceeding the limit of its pecuniary jurisdiction should be given to the plaintiff There is nothing in Act XII of 1887 to confine the sum for which a Civil Court may pass a decree to the limit of its jurisdiction to entertain a suit. *Mahabir Singh* v *Behari Lal, I L R, 13 All., 320,* referred to. MADHO DAS *v* RAMJI PATAK I. L. R., 16 All, 286

135 ———— *Jurisdiction—Appellate Court*—Where it appears on appeal that the suit has not been rightly valued, and if rightly valued the Court of first instance would not have had jurisdiction to try it, the Appellate Court may entertain the objection, though it had not been raised in the Court below. SHEO GOBIND RAUT *v* ABHAI NARAIN SINGH . 5 B. L. R., Ap., 17

136 ———— Undervaluation—*Ground for dismissing appeal—Insufficient stamp*—Where an appeal was brought on an insufficient stamp, the appeal was dismissed without prejudice to the appellant bringing a fresh appeal within twenty days on a full stamp WALI ALAM *v* NASRAN

[3 B L. R., Ap., 101

S C. WOLEE ALUM *v* MISRUN 12 W R., 50

137 ———— *Ground for dismissing appeal*—When a suit has been admitted upon a certain stamp, tried, and decreed for the

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

plaintiff, "undervaluation" is no ground for dismissing the defendant's appeal. EMAMUDDIN KHAN v. RAMKISHORE KOWAR . 5 B. L. R., Ap., 30

138. ——— *Insufficiently-stamped appeal—Deputy Registrar, Power of—Civil Procedure Code, 1859, s. 31.*—The Deputy Registrar has no authority to make an order returning a petition of appeal when the stamp fee paid upon is insufficient. The right course for that officer, if his requirements as to stamps are not complied with, is to lay the matter before the Court. But if the appellant is ready to pay what is required, then, whether the time for filing the appeal has expired or not, the Deputy Registrar is bound to receive it if it was originally presented in time. AMBUR ALI v. KALI CHAND DOSS . . . . 24 W. R., 258

139. ——— Overvaluation—*Refund of stamp duty.*—Where excess stamps had been filed in consequence of an overvaluation of the appeal, the surplus amount was ordered to be refunded. IN THE MATTER OF GRANT . . . 14 W. R., 47

140. ——— Law applicable to valuation—*Law in force at presentation of appeal.*—The valuation of an appeal must be according to the Act in force at the time of its presentation, and the original valuation under a law obsolete at the period of appeal can have no influence in the decision. ANONYMOUS . . . . . 5 Mad., Ap., 44

BHUGOBUTTY KOOER v. KUSTOOREE KOOER [15 W. R., 272

141. ——— *Civil Procedure Code, 1859, s. 229—Change of law between date of original suit and date of claim, Effect of, on jurisdiction.*—The subject-matter of an appeal should be valued for the purpose of jurisdiction according to the law in force at the date of the appeal, and not of the suit which has led to it. For the purpose of jurisdiction, a claim under s. 229 of Act VIII of 1859 is a fresh suit, and not a continuation of the suit in which the claim is made, so that where, by reason of a change in the law as to the mode of valuing suits for the purpose of jurisdiction between the date of the original suit and the claim, the Court that dealt with the original suit ceases to have jurisdiction over the subject-matter of the claim, that Court cannot try the claim. MUTTUMMAL v. CHINNANA GOUNDEN . . I. L. R., 4 Mad., 220

142. ——— Bengal Civil Courts Act (Beng. Act VI of 1871), s. 22—*Subject-matter in dispute—Jurisdiction of the High Court.*—The appeal from the decree or order of a Subordinate Judge or Munsif, where the amount or value of the subject-matter in dispute in a suit exceeds R5,000, lies to the High Court, although the amount or value of the subject-matter in dispute in appeal is less than R5,000. IN THE MATTER OF THE APPEAL OF DULI CHAND . . . . 9 B. L. R., 190

S. C. DOOLY CHUND v. NIRBAN SINGH. NURRENDER NARAIN SINGH v. SREE NARAIN DOSS. NEERBHOY SINGH v. RAMPERSHAD SINGH [18 W. R., 261

So also held, under s. 18, Act XVI of 1868, by the majority of the Court (PEARSON, J., dissenting) of the North-Western Provinces in MAHOMED HOSSEIN KHAN v. SHIB DYAL [5 N. W., 108: Agra, F. B., Ed. 1874, 27

MASOOMA BEBEE v. NAZUR FATMA [1 N. W., 117: Ed. 1873, 20

CHUNDER BHAN SINGH v. JAIRAM GEER [5 N. W., 17

But *see* SRIMATI DASI v. SOUDAMINI DOSSEE [9 B. L. R., 192 note

143. ——— *Appeal when one suit has been split up into several.*—Where a suit for R13,777 was brought against defendants whose interests were not identical, and the Judge ordered separate trials of the different causes involved as provided in s. 9, Act VIII of 1859, an appeal by the defendants from the decision in one of the suits valued at R140 was held not to lie to the High Court. RAM COOMAR DOSS v. BIDHOO MOOKERDASSEE . . . . . 15 W. R., 3

144. ——— *Interest on amount of appeal.*—Where an appeal was brought from an order in execution of the decree in a suit in which both the amount sued for and the amount of the decree were below R5,000, but by reason of interest the appeal was valued at more than that sum, the case was held to come within the principle of *In re Duli Chand.* RAI DHANPAT SINGH BAHADOOR v. MADHUMATI DEBI [9 B. L. R., 197 note: 18 W. R., 316

145. ——— *Subject-matter in dispute—Jurisdiction of High Court—Execution of decree—Act XXIII of 1861, s. 11.*—The appeal from an order of a Subordinate Judge directing execution to issue lies to the District Judge, and not to the High Court, where the amount claimed in a suit is under R5,000, although the amount sought to be recovered in execution has, by the addition of interest since decree, grown to a sum exceeding R5,000. RUTTANJOTE KOOER v. RAM DASS [10 B. L. R., 290: 19 W. R., 13]

146. ——— *Execution of decree.*—When the High Court called up an appeal to the Zilla Judge, and tried it as a regular appeal, and passed a decree thereon,—*Held* that this did not entitle the parties to prefer an appeal to the High Court in the proceedings in execution of that decree. Such appeal would lie to the Zilla Judge. RAMANOOGRA SAHOY v. BYJNATH LAL [10 B. L. R., 291 note: 15 W. R., 164

147. ——— *Suit in value over R5,000—Appeal heard by Judge without jurisdiction.*—The High Court in special appeal remanded a case to the Subordinate Judge for re-trial. The case having been re-tried, an appeal against the second decree of the Subordinate Judge was filed in the

VALUATION OF SUIT—*continued*

2. APPEALS—*continued.*

Court of the District Judge, who declared that it was not cognizable by him, as the value of the property in dispute exceeded R5,000 A regular appeal was preferred to the High Court *Held* that the entire proceedings subsequent to the first decree of the Subordinate Judge were *ultra vires* and could not be recognized, and that the appeal would not lie THAKOOR PERSHAD SINGH *v* MAHADEO SINGH

[5 N. W., 210

148. ——— **Computation of value**—*Valuation of appeal for jurisdiction—Mad Act III of 1873 (Madras Civil Courts Act)* —Accor-

than R5 000, and an appeal was preferred to the District Court, but the amount in dispute in the appeal did not exceed R5,0 0, that the District Court had no jurisdiction to hear the appeal MUTHUSAMI PILLAI *v* MUTHU CHIDAMBARA CHETTI

[7 Mad., 356

149. ——— **Appeals in measurement cases**—*Miscellaneous petitions* —Petitions of appeal in cases to obtain an order for measurement may be written on the stamp used for miscellaneous petitions SMITH *v* NUNDUN LAL

[6 W. R., Act X, 13

150. ——— *Right to measure valued at specified amount* —Where a zamindar

151. ——— **Appeal from order de-**

party who claimed to be in possession of property taken in execution of a decree to which he was no party, and with which he had no concern, had no *locus standi* in the execution case, is in the nature of a miscellaneous appeal and should be on a stamp for an ordinary petition MOHESH CHUNDER BANERJEE *v* CHUNDER MONEE DABEE 9 W. R., 130

152. ——— **Appeal from order rejecting application to set aside ex parte decision**—*Summary appeal* —The stamp required for a petition of appeal from an order rejecting an application to set aside an *ex parte* decision under s. 119, Act VIII of 1859, was a two-rupee stamp Such an appeal was treated as a summary and not a regular appeal PARBUTTY *v.* GHEEDHAREE LALL

[1 W. R., Mis , 15

153 — **Appeal from order rejecting plaint for misjoinder**—*Miscellaneous appeal—Stamp.*—An appeal from an order rejecting a plaint for misjoinder is a miscellaneous appeal; and if it is rejected, an appeal from the order of rejection is also of the nature of a miscellaneous appeal, and is to be valued and stamped as such. KOSSELLA KOER *v* BEHAREE PATUCK 13 W. R., 70

154 ——— **Appeal by mortgagee on question of lien.**—Where the appeal by the mortgagee was not with reference to the property, but to a mortgage lien,—*Held* that the valuation for the purpose of stamp in such appeals should be with reference to the value of the lien for the mortgage debt of incumbrance, and not with reference to the value of the mortgaged property. MAHOMED SHEEBUN KHAN *v* MISSER KOONDUN LALL BHEEKA *v* NUND KISHORE

[Agra, F. B., 158 : Ed. 1874, 119

155. ——— **Appeal in suit for profits in respect of several years**—*Court fees—Dis-*

in respect of several years, the proper Court fee leviable on the memorandum of appeal is one calculated on the aggregate amount of the profits claimed and not one calculated separately on the amount of profits claimed for each year MUHAMMAD MALICK KHAN *v* NIHHAI BIBI I. L. R., 7 All., 761

156. ——— **Appeal from rejection of claim by forest settlement officer**—*Madras Forest Act (V of 1882), s 10—Appeal to the District Court—Court Fees Act, sch II, art 11 (a) art 17, cl (vi)* —An appeal to the District Court from the rejection of a claim by a forest settlement officer under cl 2 of s 10 of the Madras Forest Act, 1882, falls under art 17, cl. (vi) and not under art. 11 (a) of sch II of the Court Fees Act, 1870 KAMARAJA *v* SECRETARY OF STATE FOR INDIA

[I L. R., 8 Mad., 22

157 ——— **Appeal from order disallowing an application to file an agreement to refer to arbitration**—*Court fee, Mode of calculation of* —*Per* OLDFIELD *J* —The Court-fee payable on a memorandum of appeal from an order under s. 523 of the Civil Procedure Code, disallowing an application to file an agreement to refer to arbitration, is an *ad valorem* fee computed on the value of the subject matter in dispute in the appeal DAYA NAND *v* BAKHTAWAR SINGH

[I L. R., 5 All., 333

158. ——— **Appeal against award under Land Acquisition Act**—*Court Fees Act (VII of 1870), ss. 8 and 5* An appeal against an award made by the District Judge under Land Acquisition Act (I of 1894) was filed in the High Court; the appeal memorandum bearing a Court-fee stamp of R10 only was admitted by the Registrar, no question having been raised as to the sufficiency of the stamp. On the appeal having been posted for hearing, it was objected on the part of the respondent that the stamp paid was insufficient. *Held* that the appeal memorandum should have borne an *ad valorem* stamp under Court Fees Act, s. 8, and that there having been no decision by the taxing

officer under s. 5, it was open to the respondent to raise the objection on appeal at the hearing. KASTURI CHETTI *v.* DEPUTY COLLECTOR, BELLARY [I. L. R., 21 Mad., 269

159. ———— **Appeal from order of Judge under Land Acquisition Act (I of 1894) on reference by Collector as to disposal of compensation awarded**—*Court Fees Act (VII of 1870).*—In an appeal to the High Court from the order of the District Judge made upon a reference by the Collector under ss. 18 and 19 of the Land Acquisition Act, 1891, as to the disposal of compensation awarded for land taken up by Government under the Act, the memorandum of appeal must be stamped as an appeal from an original decree. SHEO RATTAN RAI *v.* MOHRI I. L. R., 21 All., 354

160. ———— **Appeal from order disposing of dispute under Civil Procedure Code, s. 322B**—*Dispute as to extent of judgment-debtor's liability to claim—Nature of appeal—Court Fees Act, VII of 1870, sch. II, No. 11.*—An appeal from the decision of a dispute under s. 322B of the Civil Procedure Code falls directly within the exception of art. 11, sch. II of the Court Fees Act (VII of 1870), and the memorandum of appeal should therefore be presented as for a decree in a suit upon an *ad valorem* stamp. *Srinivasa Ayyangar* v. *Pria Tambi Nayakar, I. L. R., 4 Mad., 420,* dissented from. AHMAD KHAN *v.* MADHO DAS [I. L. R., 7 All., 565

161. ———— **Appeal in partition suit**—*Court Fees Act, sch II, art. 17, cl. 6—Stamp on memorandum of appeal in partition suit.*—The stamp fee payable on appeals to the High Court in suits asking for "partition, the separation of a share, and for khas possession of that share after separation," is that leviable under art. VI, cl. 17, sch. II of the Court Fees Act. For the purpose of jurisdiction the Court should be guided by the value of the property in suit, but the amount of the stamp fee should be governed by a different principle. KIRTY CHURN MITTER *v.* AUNATH NATH DEB [I. L. R., 8 Calc., 757: 11 C. L. R., 95

See BADYANATH ADYA *v.* MAKHAN LAL ADYA [I. L. R., 17 Calc., 680

162. ———— **Appeal from decree for possession disallowing perpetual character of leases.**—A suit for possession of certain lands having been decreed on the ground of plaintiff's right of occupancy, but the perpetual (mirasi) character of the leases under which the claim had been made having been disallowed, an appeal was preferred to have it declared that the leases were perpetual. *Held* that, as the value of the claim would be the difference in the value of the land as held under a mirasi tenure at a fixed rent, or an ordinary tenure at a fluctuating rent, and as this might be an extremely difficult calculation, the stamp fee upon the appeal would be properly fixed according to the valuation put by the appellant upon the subject-matter of his claim. KEBUL RAM MUNDUL *v.* WELLS . . . . . . 24 W. R., 454

163. ———— **Appeal from decree in suit for possession and mesne profits**—*Mesne profits to be determined in execution of decree—Valuation of appeal against decree.*—In a suit for land with mesne profits a decree was passed for the plaintiff in which the amount of mesne profits was left to be determined in execution, the date from which they should be computed being the date of the suit. The defendant appealed against the decree on the ground that he should not have been decreed to pay either mesne profits or costs. In the valuation of the appeal for the purposes of the Court Fees Act, nothing was included on account of the mesne profits. *Held* that no stamp duty was payable in respect of the mesne profits subsequent to the institution of the suit. MAIDAN *v.* JANAKIRAMAYYA . . . I. L. R., 21 Mad., 371

See RAMAKRISHNA BHIKAJI *v.* BHIMABAI [I. L. R., 15 Bom., 416

164. ———— **Appeal under cl. 10 of Letters Patent, High Court, N.-W. P., from an order of remand under s. 562 of the Code of Civil Procedure**—*Court Fees Act (VII of 1870), sch. ii, art. 11.*—*Held* that in an appeal under s. 10 of the Letters Patent from an order of a single Judge of the Court remanding a case under s. 562 of the Code of Civil Procedure the proper Court-fee is R2. BALLI RAI *v.* MAHABIR RAI . . I. L. R., 21 All., 178

165. ———— **Appeal under Agency Rules, No. 22, under Act XXIV of 1839**—*Court Fees Act (VII of 1870).*—An appeal preferred to His Excellency the Governor in Council under Rule No. 22 of the Agency Rules framed under Act XXIV of 1839 against the decision of the Governor's Agent at Vizagapatam and referred by Government to the High Court for disposal is not chargeable under the Court Fees Act. REFERENCE UNDER COURT FEES ACT, s. 5 [I. L. R., 22 Mad., 162

166. ———— **Appeal in suit to enforce a right of pre-emption**—*Appeal by purchaser—Court-fee—Act VII of 1870 (Court Fees Act), s. 7 (i) and (vi).*—Where, in a suit to enforce a right of pre-emption, a decree was passed against the vendees-defendants, and they appealed from the same on the grounds that they were entitled to receive from the plaintiffs-pre-emptors a sum larger than that found by the Court of first instance to have been the purchase-money, and also that the plaintiffs had estopped themselves from asserting the right by refusing to purchase,—*Held* that the nature of the suit was not changed in appeal, and that, on the contrary, the subject-matter of the dispute between the parties was the right of pre-emption the value of which, for the purposes of Court-fee, was to be determined in manner directed by s. 7, cl. (vi), of the Court Fees Act, VII of 1870. *Ram Lakhan Rai* v. *Bandan Rai* distinguished. Where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

matter what other pleas may be taken, the value of the subject matter in dispute, for the purposes of the Court Fees Act, must be determined as in terms provided in art (vi) of s 7 of the Act. Where the question in appeal relates solely to the amount to be paid by the pre-emptor, the Court fee should be calculated *ad valorem* on the difference between the amounts alleged as the sale price on the one side and the other HAFIZ AHMAD v. SOBHA RAM [I. L. R., 6 All., 488

167.———— **Appeal in suit for redemption**—*Court Fees Act (VII of 1870), s 7, cl 9—Madras Civil Courts Act (Mad. Act III of 1873), s. 13—Suits Valuation Act (VII of 1887), s. 11—District Judge, Jurisdiction of*—In a suit in the Court of a Subordinate Judge to redeem certain land on payment of R1,625 being a quarter of a debt for which it had been mortgaged together with other land, a decree was passed for redemption of part of the land, but the Court held that the plaintiff had not established his right to the rest The plaintiff appealed to the High Court paying *ad valorem* Court-fees computed on the value of the land exonerated only. *Held* (1) that the *ad valorem* Court-fees should be computed on one-fourth of the mortgage-debt, (2) that the appeal lay to the District Court, and since Act VII of 1887, s 11, did not apply to the case, the petition of appeal should be returned for presentation in that Court. VASUDEVA v MADHAVA I. L. R., 16 Mad., 326

168. ———————— *Court Fees Act (VII of 1870), s 17—Claim by mortgagor for rent in same suit—Court-fee on appeal*—A suit to redeem a mortgage for R3,500 and to recover a certain sum on account of rent was dismissed so far as the prayer for redemption was concerned, and also part of the claim for rent was disallowed It did not appear that the arrears of rent were intended to be set off against the mortgage debt The plaintiff appealed. *Held* that the Court-fee should be computed on the principal amount of the mortgage-debt and on the claim which had been disallowed on account of rent. RAMA VARMA RAJAH v KADAR . . . I. L. R., 16 Mad., 415

169. —— **Appeal in suit for redemption of usufructuary mortgage**—*Bengal Civil Courts Act (VI of 1871), s. 22.*—The plaintiffs sued for the possession of certain immoveable property, alleging that they had mortgaged such property to the defendants, and that the mortgage-debt had been satisfied out of the profits of the property The defendants set up a defence to the suit which raised the question of the proprietary right of the plaintiffs to the property. The value of the mortgagees' interests in the property was below R5 000; the value of the mortgaged property exceeded that am[illegible]
the origi[illegible]
suit, it [illegible]
decree la[illegible]
Court [illegible]

within the meaning of s. 22 of Act VI of 1871 was the mortgage and the mortgagees' rights under it, and that, the value of this being only R2 000, the appeal should have been preferred to the District Court Second Appeal No 1039 of 1877 dissented from. GOBIND SINGH v KALLU I. L. R., 2 All., 778

170 — — **Appeal from decree making property liable for mortgage-debt**—*Court Fees Act (VII of 1870), s 6, sch. II, art. 17*—In a suit on a mortgage-bond a decree was passed for payment of principal and interest, and in default for sale of the mortgaged property Some of the defendants filed a memorandum of appeal against so much of the decree as declared the liability of the property, affixing a stamp of R10 only. *Held* that the proper stamp to be paid was not R10 as in the case of a declaratory decree, but on the value of the debt not exceeding the value of the property VENKAPPA v NARASINHA I. L. R., 10 Mad., 187

171. – **Appeal from decree for ejectment and mesne profits**—*Court Fees Act (VII of 1870), s 7—Court fee on memorandum of appeal*—A memorandum of appeal from a decree directing ejectment and awarding mesne profits is chargeable with Court fees calculated both on the land and on the mesne profits. BRAHMAYYA v. LAKSHMINARASIMHAM [I. L. R., 16 Mad., 310

172. **Appeal in suit for ejectment**—*Claim by tenants for improvements of greater value than plaint valuation—Appeal by tenants for improvements—Court fees payable on such appeal*—In a suit for ejectment, in which the plaint land was valued at R50 and court-fee paid on that valuation, the tenants claimed R500 as compensation for improvements, which claim was disallowed The tenants appealed on the ground that their claim for improvements should have been allowed, but only paid Court fee on the plaintiff's valuation On a reference as to whether the value of the improvements ought not to be taken into account for the purpose of levying the Court-fee, *Held* that, as the claim for improvements was not the subject matter of the suit, but was merely incidental to the decree for possession, and on grounds of convenience, the fee payable by an appellant in such a case should be that payable in a suit for possession of land REFERENCE UNDER COURT FEES ACT, s 5 I. L. R., 23 Mad., 84

173. —— – **Appeal, Memorandum of, under Bengal Tenancy Act (VIII of 1885), s. 108, cl. 3**—*Court Fees Act (VII of 1870), sch. II, art 17, cl. 6.*—The Court fee payable on a memorandum of appeal presented to the High Court under s. 108, cl 3 of the Bengal Tenancy Act of 1885 is that prescribed by art. 17, cl 6, of sch. II of the Court Fees Act PATI GHORAI v. RAM KHELAWAN LAL THAKUR I. L. R., 18 Calc., 667

174. ———— **Court-fees stamp on memorandum of second appeal to High Court from decision of District Court on appeal**

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

from Talukhdari Settlement officer—*Court Fees Act (VII of 1870), sch. II, art. 1, and sch. I, art. 1—Application for execution of decree for partition—Gujarat Talukdars Act (Bom. Act VI of 1888).*—A second appeal from an order rejecting an application for execution of a partition-decree under the Gujarat Talukhdars Act (Bombay Act VI of 1888) is not within the contemplation of art. 1, sch. I, but is an application falling under art. 1 of sch. II of the Court Fees Act (VII of 1870). The Court-fee stamp of R2 should therefore be affixed to the memorandum of appeal. JAMASANG DEVABHAI v. GOVABHAI KIKABHAI . I. L. R., 10 Bom., 408

175. ——— Appeal from decree payable by instalments—*Court Fees Act (VII of 1870), s. 16, and sch. I, art. 1—Court-fee on appeal from decree granting partial relief.*—The Court-fees which an appellant has to pay on a memorandum of appeal from a decree which gives him only partial relief are to be calculated upon the difference between the value of the relief which he claims and the relief granted by the decree appealed against. Where a decree was made payable by three instalments and the plaintiff appealed on the ground that it should not have been made so payable,—*Held* that the Court-fees should be calculated upon the difference between the amount claimed in the Court below and the sum of the present values of the three instalments payable on the dates mentioned in the decree. LUCHUN CHUNDER ASH v. KHODA BUKSH MONDUL . . I. L. R., 19 Calc., 272

176. ——— District Judge, Jurisdiction of—*Madras Civil Courts Act (III of 1873), s. 13 (2)—Appeal from Subordinate Judge.*—Certain members of a Moplah family sued the others in a Subordinate Judge's Court to recover their distributive share under Mahomedan law. The property to be divided was more than R5,000 in value, but the share claimed by the plaintiffs was less. The Subordinate Judge passed a decree against which an appeal was preferred to the District Court, but the District Judge returned the appeal for presentation in the High Court. On appeal to the High Court against the decision of the District Judge,—*Held* that it is the value of the share claimed and not the value of the property from which that share has to be taken, that is the value of the subject-matter of the suit within the meaning of cl. 2, s. 13 of the Madras Civil Courts Act, and therefore the District Court had jurisdiction to entertain the appeal. KUNHIKUTTI v. ACHOTTI I. L. R., 14 Mad., 462

177. ——— *Madras Civil Courts Act (Mad. Act III of 1873), s. 12—Valuation of relief—Suit for partition.*—In an appeal against a decree of a Subordinate Judge dismissing a suit brought by the members of one Nambudri illom against the members of another for partition and delivery of a moiety of the property of an extinct illom, it appeared that the value of the share claimed was less than R5,000. *Held* that the appeal lay to the District Court. *Krishnasami v. Kanakasabai, I. L. R., 14 Mad., 183,* followed. NARAYANAN v. NARAYANAN

[I. L. R., 15 Mad., 69

178. ——— *Madras Civil Courts Act (III of 1873), s. 13—Civil Procedure Code (Act XIV of 1882), s. 331.*—The plaintiff, being the holder of a decree of a subordinate Court for more than R5,000, was obstructed in execution by the present defendants. He applied to the Court for the removal of the obstruction, the property, which was the subject of the application, being valued at less than R5,000, and the Subordinate Judge directed that the application be registered as a regular suit under the Civil Procedure Code, s. 331, and ultimately passed a decree in favour of the plaintiff. *Held* that the valuation of the appeal for the purpose of jurisdiction was to be taken as being less than R5,000, notwithstanding that the subject-matter of the original suit was valued above that sum, and that the appeal lay to the District Judge, and not to the High Court. KALIMA v. NAINAN KUTTI. MAHOMED v. NAINAN KUTTI

[I. L. R., 13 Mad., 520

179. ——— *Suits Valuation Act (VII of 1887), s. 8—Valuation for purposes of Court-fees and for purposes of jurisdiction—Suit for account.*—In a suit for an account the valuation entered in the plaint for the purpose of fixing Court-fees determines the question of jurisdiction, the valuation for both purposes being the same under s. 8 of Act VII of 1887. The plaintiff sued for an account, and valued the relief sought at R130. The suit was filed in the Court of a Subordinate Judge of the first class. The Subordinate Judge rejected the claim. Thereupon the plaintiff appealed to the High Court, valuing his claim in appeal at R10,500. *Held* that the appeal lay to the District Court, and not to the High Court. BHAGVANTRAI MUNSHI v. MEHTA BAJUBAO

[I. L. R., 18 Bom., 40

180. ——— *Suits Valuation Act (VII of 1887), s. 8—Suits for account—Court-fee stamp—Amount of claim as fixed by plaintiff—Relief incidental to the principal relief.*—According to s. 8 of the Suits Valuation Act (VII of 1887), in suits for taking an account the Court-fee stamp and jurisdiction are both determined by the amount of claim as fixed by the plaintiff. In a suit for taking an account the plaint having contained several items which were all incidental to the chief item of relief, the plaint was held to be substantially one to have a minor plaintiff's estate administered, that is, to have accounts taken and the accounting party ordered to pay what (if any) should be found due from him on the balance of such account. The plaintiffs having put the valuation of the suit at R130 in the plaint,—*Held* that the High Court had no jurisdiction to hear the appeal against an order rejecting the plaint. The appeal lay to the District Court. The appeal was therefore returned for presentation in the proper Court. BAI AMBA v. PRANJIVANDAS DULLABHRAM

[I. L. R., 19 Bom., 198

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued*

181. ——————— *Suits Valuation Act (VII of 1887) s. 8—Suit for account—Court Fees Act (VII of 1870), s 7 (iv), cl (f), and s. 11—Bombay Civil Courts Act (XIV of 1869), s. 26*—In a suit for an account of partnership dealings, the plaintiffs valued the claim approximately at R600 The Subordinate Judge passed a decree awarding to the plaintiffs a sum of R 0,530-3 2 The plaintiffs thereupon paid an additional Court-fee of R900 under s. 11 of the Court Fees Act (VII of 1870). The defendants appealed to the High Court from the decree of the Subordinate Judge. The plaintiffs objected that the appeal lay to the District Judge, and not to the High Court. *Held* that the value of the subject-matter of the suit exceeded R5,000; the appeal therefore lay to the High Court under s 26 of Act XIV of 1869 IBRAHIMJI ISSAJI *v.* BEJANJI JAMSEDJI . I. L. R., 20 Bom., 265

182. ——————— *Bombay Civil Courts Act (XIV of 1869), s. 26—Administration suit—Suit filed in second class Subordinate Judge's Court—Decree in such a suit—Appeal from such decree*—The plaintiff filed an administration suit in the Court of a Subordinate Judge of the second class valuing the relief claimed at R130 The Subordinate Judge found that the property in suit was worth over a lakh of rupees, that the liabilities came to R5,7-9, and that the defendant was indebted to the estate in the sum of R5,199 He drew up a preliminary decree, directing (*inter alia*) that the defendant should pay this amount into Court within two weeks Against this order [illegible] Court. The [illegible] presentation [illegible] the subject- [illegible] sing the order of the District Judge, that the appeal lay to the District Court SHET KAVASJI MANCHERJI *v.* DINSHAJI MANCHERJI I. L. R., 22 Bom., 963

[illegible]

the debt secured thereby were binding on the first defendant, but not on the second defendant. The plaintiff preferred a second appeal against the second defendant as sole respondent *Held* that the Court-fee payable on the second appeal should be calculated on the amount of the debt sought to be recovered. RAMASAMI *v.* SUBBUSAMI I. L. R., 13 Mad., 508

184. ——————— *Suit for ejectment—N.-W. P. Rent Act, s. 93, cl (h)—General Clauses Act (I of 1887), s 39, cl. (11)—Subject-matter of suit—Appeal valued for purposes of jurisdiction at a higher amount than the suit.*—Where a plaintiff in a suit under s. 93 of the N.-W. P. Rent Act valued his suit at R16-3, which valuation was not objected to either by the defendant or the Court, and subsequently, being defeated in his suit, preferred an appeal, which he valued at a very much greater amount,—*Held* that he must be bound by the valuation put by him upon his suit, and could not by alleging a greatly enhanced value obtain an appeal which would not have lain on the valuation stated in the plaint *Ram Raj Tewari v. Girnandan Bhagat, I. L. R., 15 All., 63* distinguished. *Mahabir Singh v. Behari Lal I. L. R., 13 All., 320*, referred to RADHA PRASAD SINGH *v.* PATHAN OJAH [I. L. R., 15 All., 363

185. ——————— *Court Fees Act (VII of 1870), s 10, cl. 2, s 12 cl 11 sch II, art 17, cl 6—Order in appeal by defendant for payment of fee by plaintiff*—The plaintiffs, having raised a claim to a kanom attached in execution of a decree against their undivided brother, which was allowed in part, sued for a declaration of their title to four-fifths of the Kanom amount, affixing to the plaint a R10 stamp. The plaintiffs obtained a decree, against which the defendant appealed to the District Court. While the appeal was pending, the District Judge, holding that the Court fee paid on the plaint was insufficient, ordered that the plaintiffs should pay the [illegible] fixed by the District Judge for the payment to be made, and on the 25th March he accordingly made an order dismissing the suit *Held* that the plaint was sufficiently stamped, and that in any case, the order dismissing the suit while the appeal was still pending was irregular KAMMATHI *v.* KUNHAMED [I. L. R., 15 Mad., 288

186 [illegible] three parcels of land and obtained a decree in the Court of a District Munsif The suit was valued at R189 8-0. Defendant 4, who claimed to be entitled as jenmi to one of the parcels preferred an appeal The District Judge held that the suit should have been valued at R1 161-8 0, and he made an order that additional Court fees should be paid accordingly; the order not having been complied with, he made an order, "Original suit rejected." He subsequently referred the appeal for disposal to a Subordinate Judge, who accordingly passed a decree, allowing the appeal of defendant 4 with costs. On appeal against the above order and decree,—*Held that the* order of the District Judge was irregular and the appeal should be restored to the file of the Subordinate Judge to be disposed of according to law KERALA VARMA *v.* CHADAYAN KUTTI [I. L. R., 15 Mad., 181

187 ——————— *Suit for declaration of title and for injunction—Consequential relief—Court Fees Act (VII of 1870), s. 7, cl 4—Suits Valuation Act (VII of 1887), s. 8*—Where plaintiffs sued for a declaration that they were entitled to share in certain talukhdari estates and for an injunction to restrain defendant from cutting and removing timber from certain forests, or, if the injunction was not granted for an order to defendant to

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for want of jurisdiction,—*Held* that the suit was one for a declaration and consequential relief under s. 7, cl. 4 (*c*), of the Court Fees Act, and that, as the claim was valued at R230 only, the appeal lay under Act VII of 1887, s. 8, to the District Court. An injunction is in the nature of consequential relief. GULAB SINGJI *v.* LAKSHMANSINGJI . I. L. R., 18 Bom., 100

188. ——— *Suit for injunction and specific performance — Suits Valuation Act (VII of 1887), s. 8 — Court Fees Act (VII of 1870) — Valuation for purposes of jurisdiction.*— The provisions of s. 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII of 1887, the plaintiff valued his claim at R664 for the computation of Court-fees, and at R14,000 for purposes of jurisdiction. *Held* that the appeal from the decree of the Court of first instance lay to the District Court, and not to the High Court. BAI VARUNDA LAKSHMI *v.* BAI MANEGAVRI . I. L. R., 18 Bom., 207

189. ——— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 21, sub-s. (1)—"Value of the original suit."*— Where the value of a suit was found by the lower Court to be less than R5,000, and the plaintiff contested that finding and preferred his appeal to the High Court on the valuation of R7,500 made in his plaint,—*Held* that the words "value of the original suit" in sub-s. (1), s. 21 of the Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887) did not mean the value as found by the original Court, and the appeal was rightly preferred to the High Court; that as it did not appear in the present case that the overvaluation was the result of any design to change the venue of appeal, the question whether "value" in the said section should be taken to be *bonâ fide* value need not be considered. *Lakshman Bhatkar* v. *Babaji Bhatkar, I. L. R., 8 Bom., 31,* and *Mahabir Singh* v. *Behari Lal, I. L. R., 13 All., 320,* approved. NILMONY SINGH *v.* JAGABANDHU ROY [I. L. R., 23 Calc., 536

190. ——— *Court Fees Act (VII of 1870), s. 16, and sch. II, art. 71, cl. iii—Declaratory decree, Suit for—Consequential relief —Right of priest to charao (offerings to idol)— Suit for arrears of maintenance.*—In a suit upon an ekrar executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the charan (offerings to the idol) and recoverable from the defendant's successors in office, the original Court passed a decree for the arrears, but refused to make the declaration. The plaintiffs appealed only against the order refusing the declaration, the memorandum of appeal bearing a Court-fee stamp of R10. The respondent objected that the declaration asked for in appeal involved consequential relief, and that an *ad valorem* fee was payable by the appellant. *Held* the memorandum was correctly stamped under s. 16 and cl. iii, art. 17, sch. II of the Court Fees Act (VII of 1870). *Venkappa* v. *Narasimha, I. L. R., 10 Mad., 187,* and *Vithal Krishna* v. *Balkrishna Janardan, I. L. R., 10 Bom., 610,* distinguished. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA . . . . I. L. R., 23 Calc., 645

191. ——— *Fee payable on appeal—Suit for declaratory decree—Possibility of valuing subject-matter—Original valuation by plaintiff—Court Fees Act (VII of 1870), s. 7 (iv) (c).*—A plaintiff was granted a decree (which was affirmed on appeal to the Subordinate Court), declaring a sale-deed invalid on the ground that it had been obtained by fraud, coercion, undue influence, and without consideration. The suit had been originally valued by plaintiff at R800, but by an order of the Munsif's Court that figure was altered to R2,000, the amount mentioned in the deed. One of the defendants preferred a second appeal to the High Court, where a question arose as to the amount of duty payable on such appeal. *Held* that s. 7 (iv) (*c*) of the Court Fees Act applied, and that the valuation given by the plaintiff was the valuation to be accepted. Whether the reference to an appeal in the sub-section applies to a case in which the subject-matter of the appeal is not co-extensive with the subject-matter of the suit—*Quære. Karam Khan* v. *Daryai Singh, I. L. R., 5 All., 331,* considered. SAMIYA MAVALI *v.* MINAMMAL [I. L. R., 23 Mad., 490

192. ——— *Memorandum of appeal to Special Judge under Bengal Tenancy Act—Court Fees Act (VII of 1870), ss. 12 and 17, sch. II, art. 1, cl. (b), part II, art. 17, cl. (vi)— Bengal Tenancy Act, s. 104, cl. (2), s. 108, cl. (2), and s. 189—Joinder of parties in one application— Rule 25 of Rules of Government of India under Bengal Tenancy Act*—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision, making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of R10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code. *Held* by a Full Bench that the Local Government acted within the powers conferred by s. 189, cl. 1, of the Bengal Tenancy Act in making rule 25 of Ch. VI of the Government rules under the Act by which the landlord was authorized to join as defendants several defendants in one application for settlement of rents. *Held* also that the decision of the Special Judge did not dispose of any question relating to valuation, far less of any question relating to the valuation of a suit, and the decision was *not* final under s. 12 of the Court Fees Act; and that the proceedings in this case could not properly be regarded as a suit, and neither art. 17, cl. vi, of sch. II nor

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

s. 17 of the Court Fees Act was applicable The memorandum of appeal was nothing more or less than an application subject to one Court fee of eight annas only under art 1, cl (*b*), part II of sch II of the Court Fees Act The case of *Petu Ghorai* v *Ram Khelawan Lall Bhukut, I L R*, 18 *Calc*, 667, was wrongly decided UPADHYA THAKUR *v* PERSIDH SINGH I. L. R., 23 Calc., 723

193 — *Court Fees Act (VII of 1870), sch I—Relief in respect of costs—Distinct relief*—When apart from, and independently of, any other reliefs which an appellant seeks

decree have not been properly assessed or apportioned, the value of such distinct relief should be reckoned as part of the subject matter in dispute for the purposes of the first schedule of the Court Fees Act IN RE MAKKI IN RE RAMAN I. L. R., 19 Mad., 350

194. ——————— *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Appeal from decree granting two distinct declarations*—A plaint contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another, and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for. The defendants appealed to the High Court against the whole decree and stamped their memorandum of appeal with a stamp of R10 only. On the 9th November 1887 it was tendered to a Judge for admission, and it then bore a report dated the 7th November by the officer appointed under s. 5 of the Court Fees Act, "Report will be made on receipt of record." The Judge made an order, "Admit, subject to stamp report," and the memorandum was then received by the office, and the appeal was entered on the register On the 27th September 1888 the office reported that there was a deficiency in the stamp of R615, on the 9th November the taxing officer ordered that the deficiency should be made good; and on the 8th December 1888 it was made good At the hearing of the appeal a preliminary objection was taken that the appeal had never been validly presented within time, or admitted, and that it could not be heard. *Held* that there was before the Court no valid appeal as to the merits of which the Court could give a decision. *Held* also that the stamp of R10 was insufficient, inasmuch as two distinct declarations were asked for and obtained, and were by the appeal sought to be set aside, and it was not the province of the taxing officer or of the Judge or Court on a question of the sufficiency of a stamp or fee to consider whether a plaintiff or an appellant was asking for more declarations or reliefs than were required for his protection BALKARAN RAI *v* GOBIND NATH TIWARI . I. L. R., 12 All., 129

VALUATION OF SUIT—*concluded.*

2 APPEALS—*concluded*

195. —— —— *Decree for redemption conditional on payment of a certain sum—Appeal by mortgagor—Court fee payable on memorandum of appeal—Act VII of 1870 (Court Fees Act), s. 7, cl 4*—Where a mortgagor sues for redemption on the allegation that the mortgage-debt has been satisfied and a decree for redemption is passed on payment of a certain amount, and the mortgagor appeals against the amount he is ordered to pay, the Court fee payable on the memorandum of appeal must, under s. 7, cl. 9 of Act VII of 1870, be computed according to the principal money expressed to be secured by the instrument of mortgage, and not according to the balance which the mortgagor alleges to be due *Semble*—If the decree had allowed redemption on payment of a certain sum and the defendant mortgagee was appealing on the ground that the amount due was greater than that sum the Court fee should be calculated on the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due PIRDHU NARAIN SINGH *v* SITA RAM I. L. R, 13 All, 94

VALUE OF PROPERTY

———— Statement in will as to—

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VARIANCE BETWEEN PLEADING AND PROOF.

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1	GENERAL CASES . .	9323
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See APPELLATE COURT — EXERCISE OF POWERS IN VARIOUS CASES PLAINT [I. L. R, 10 Bom., 303

See CASES UNDER ESTOPPEL—ESTOPPEL BY DEEDS AND OTHER DOCUMENTS

See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION. [I. L. R., 21 Bom, 110

See HINDU LAW—PARTITION—PARTITION OF PORTION OF PROPERTY [I. L. R., 18 Bom., 611

See HINDU LAW—PARTITION—RIGHT TO PARTITION—PURCHASER FROM CO-PARCENERS . I. L. R., 20 Mad., 213

See CASES UNDER ISSUES—FRESH OR ADDITIONAL ISSUES.

See LANDLORD AND TENANT—EJECTMENT—NOTICE TO SUIT [I. L. R., 17 Bom., 631

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

keep a correct account of the timber removed, the first class Subordinate Judge rejected the claim for want of jurisdiction,—*Held* that the suit was one for a declaration and consequential relief under s. 7, cl. 4 (*c*), of the Court Fees Act, and that, as the claim was valued at R230 only, the appeal lay under Act VII of 1887, s. 8, to the District Court. An injunction is in the nature of consequential relief. GULAB SINGJI *v.* LAKSHMANSINGJI . I. L. R., 18 Bom., 100

188. ———————— *Suit for injunction and specific performance — Suits Valuation Act (VII of 1887), s. 8 – Court Fees Act (VII of 1870)—Valuation for purposes of jurisdiction.*—The provisions of s. 8 of Act VII of 1887 apply to Appellate Courts as well as to Courts of first instance, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that section. In a suit of the description mentioned in s. 8 of Act VII of 1887, the plaintiff valued his claim at R664 for the computation of Court-fees, and at R14,000 for purposes of jurisdiction. *Held* that the appeal from the decree of the Court of first instance lay to the District Court, and not to the High Court. BAI VARUNDA LAKSHMI *v.* BAI MANEGAVRI . I. L. R., 18 Bom., 207

189. ———————— *Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s. 21, sub-s. (1)—" Value of the original suit."*—Where the value of a suit was found by the lower Court to be less than R5,000, and the plaintiff contested that finding and preferred his appeal to the High Court on the valuation of R7,500 made in his plaint,—*Held* that the words "value of the original suit" in sub-s. (1), s. 21 of the Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887) did not mean the value as found by the original Court, and the appeal was rightly preferred to the High Court; that as it did not appear in the present case that the overvaluation was the result of any design to change the venue of appeal, the question whether "value" in the said section should be taken to be *boná fide* value need not be considered. *Lakshman Bhatkar* v. *Babaji Bhatkar, I. L. R., 8 Bom., 31,* and *Mahabir Singh* v. *Behari Lal, I. L. R., 13 All., 320,* approved. NILMONY SINGH *v.* JAGABANDHU ROY

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190. ———————— *Court Fees Act (VII of 1870), s. 16, and sch. II, art. 71, cl. iii—Declaratory decree, Suit for—Consequential relief —Right of priest to charao (offerings to idol)—Suit for arrears of maintenance.*—In a suit upon an *ekrar* executed by the priest of an idol for recovery of arrears of maintenance and for a declaration that the money due was realizable from the surplus of the charan (offerings to the idol) and recoverable from the defendant's successors in office, the original Court passed a decree for the arrears, but refused to make the declaration. The plaintiffs appealed only against the order refusing the declaration, the memorandum of appeal bearing a Court-fee stamp of R10. The respondent objected that the declaration asked for in appeal involved consequential relief, and that an *ad valorem* fee was payable by the appellant. *Held* the memorandum was correctly stamped under s. 16 and cl. iii, art. 17, sch. II of the Court Fees Act (VII of 1870). *Venkappa* v. *Narasimha, I. L. R., 10 Mad., 187,* and *Vithal Krishna* v. *Balkrishna Janardan, I. L. R., 10 Bom., 610,* distinguished. GIRIJANUND DATTA JHA *v.* SAILAJANUND DATTA JHA . . . I. L. R., 23 Calc., 645

191. ———————— *Fee payable on appeal—Suit for declaratory decree—Possibility of valuing subject-matter—Original valuation by plaintiff—Court Fees Act (VII of 1870), s. 7 (iv) (c).*—A plaintiff was granted a decree (which was affirmed on appeal to the Subordinate Court), declaring a sale-deed invalid on the ground that it had been obtained by fraud, coercion, undue influence, and without consideration. The suit had been originally valued by plaintiff at R800, but by an order of the Munsif's Court that figure was altered to R2,000, the amount mentioned in the deed. One of the defendants preferred a second appeal to the High Court, where a question arose as to the amount of duty payable on such appeal. *Held* that s. 7 (iv) (*c*) of the Court Fees Act applied, and that the valuation given by the plaintiff was the valuation to be accepted. Whether the reference to an appeal in the sub-section applies to a case in which the subject-matter of the appeal is not co-extensive with the subject-matter of the suit—*Quære. Karam Khan* v. *Daryai Singh, I. L. R., 5 All., 331,* considered. SAMIYA MAVALI *v.* MINAMMAL

[I. L. R., 23 Mad., 490

192. ———————— *Memorandum of appeal to Special Judge under Bengal Tenancy Act—Court Fees Act (VII of 1870), ss. 12 and 17, sch. II, art. 1, cl. (b), part II, art. 17, cl. (vi)—Bengal Tenancy Act, s. 104, cl. (2), s. 108, cl. (2), and s. 189—Joinder of parties in one application—Rule 25 of Rules of Government of India under Bengal Tenancy Act*—A number of tenants were joined as defendants in a proceeding for settlement of rents under s. 104, cl. 2, of the Bengal Tenancy Act, and an appeal preferred by the landlords under s. 108, cl. 2, from the Revenue Officer's decision, making all or nearly all the tenants respondents. The appeal was dismissed by the Special Judge, on the ground that as many Court-fees of R10 each as there were tenants defendants had not been paid, and the appellants petitioned the High Court to set aside the order under s. 622 of the Civil Procedure Code. *Held* by a Full Bench that the Local Government acted within the powers conferred by s. 189, cl. 1, of the Bengal Tenancy Act in making rule 25 of Ch. VI of the Government rules under the Act by which the landlord was authorized to join as defendants several defendants in one application for settlement of rents. *Held* also that the decision of the Special Judge did not dispose of any question relating to valuation, far less of any question relating to the valuation of a suit, and the decision was not final under s. 12 of the Court Fees Act; and that the proceedings in this case could not properly be regarded as a suit, and neither art. 17, cl. vi, of sch. II nor

VALUATION OF SUIT—*continued.*

2. APPEALS—*continued.*

s 17 of the Court Fees Act was applicable The memorandum of appeal was nothing more or less than an application subject to one Court fee of eight annas only under art 1, cl (*b*), part II of sch II of the Court Fees Act The case of *Petu Ghorai v Ram Khelawan Lall Bhukut, I L R, 18 Calc, 667*, was wrongly decided UPADHYA THAKUR v PERSIDH SINGH I L R, 23 Calc., 723

193 ———— — *Court Fees Act (VII of 1870), sch I—Relief in respect of costs—*

ground that by the decree under appeal the costs of the

of the first schedule of the Court Fees Act IN RE MAKKI IN RE RAMAN I. L. R, 19 Mad., 350

194. ———— *Memorandum of appeal insufficiently stamped—Conditional order admitting appeal—Deficiency made good after period of limitation—Appeal from decree granting two distinct declarations* —A plaint contained a prayer for a declaration (i) that certain property was the joint property of the plaintiff, and (ii) that it was not liable to attachment and sale in execution of a decree held by one of the defendants against another; and, as a foundation for the latter relief, alleged collusion, fictitious transactions, and want of title The decree in the suit, passed on the 14th September 1887, granted both the declarations prayed for. The defendants appealed to the High Court against the whole decree and stamped their memorandum of

Judge made an order [illegible]

9th November the taxing officer ordered that the

or admitted, and that it could not be heard *Held* that there was before the Court no valid appeal as to the merits of which the Court could give a decision. *Held* also that the stamp of R10 was insufficient, inasmuch as two distinct declarations were asked for and obtained and were by the appeal sought to be set aside, and it was not the province of the taxing officer or of the Judge or Court on a question of the sufficiency of a stamp or fee to consider whether a plaintiff or an appellant was asking for more declarations or reliefs than were required for his protection BALKARAN RAI v GOBIND NATH TIWARI . I. L. R., 12 All., 129

VALUATION OF SUIT—*concluded.*

2. APPEALS—*concluded.*

195. —— ———— *Decree for redemption conditional on payment of a certain sum —Appeal by mortgagor—Court fee payable on memorandum of appeal—Act VII of 1870 (Court Fees Act), s 7, cl 4* —Where a mortgagor sues for redemption on the allegation that the mortgage-debt has been satisfied, and a decree for redemption is passed on payment of a certain amount, and the mortgagor appeals against the amount he is ordered to pay, the Court fee payable on the memorandum of appeal must, under s 7, cl. 9, of Act VII of 1870, be computed according to the principal money expressed to be secured by the instrument of mortgage, and not according to the balance which the mortgagor alleges to be due *Semble*—If the decree had allowed redemption on payment of a certain sum and the defendant mortgagee was appealing on the ground that the amount due was greater than that sum, the Court-fee should be calculated on the difference between the sum mentioned in the decree and the amount alleged by the appellant to be due PIRBHU NARAIN SINGH v SITA RAM I. L. R., 13 All., 94

VALUE OF PROPERTY

———— Statement in will as to—

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS I L R., 1 Bom., 561

VARIANCE BETWEEN PLEADING AND PROOF.

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See APPEAL—GROUNDS OF APPEAL
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[I. L. R., 19 Bom., 303

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See HINDU LAW—CUSTOM—INHERITANCE AND SUCCESSION.
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[I. L. R., 18 Bom., 611

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See CASES UNDER ISSUES—FRESH OR ADDITIONAL ISSUES.

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VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

See CASES UNDER PLAINT—AMENDMENT OF PLAINT.

See RELIEF . I. L. R., 15 Mad., 489
[I. L. R., 19 Bom., 323

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[I. L. R., 2 Calc., 418

See WRITTEN STATEMENT.
[I. L. R., 1 Bom., 209

1. GENERAL CASES.

1. ——— **Decision on point not raised in pleadings or issues.**—A plaintiff must recover *secundum allegata et probata*, and no decree should be given in his favour on a point not raised in the pleadings nor embodied in an issue. JOYTARA DASSEE *v.* MAHOMED MOBARUCK
[I. L. R., 8 Calc., 975 : 11 C. L. R., 399

JANKEE *v.* JHANJOO . . 2 N. W., 407

MOOKTAKESHEE DEBEA *v.* COLLECTOR OF BURDWAN . . . . 12 W. R., 204

TARA CHAND ROY *v.* NOBIN CHUNDER ROY
[21 W. R., 132

PROTAB CHUNDER BOROOAH *v.* COLLECTOR OF GOWALPARA . . . . 22 W. R., 216

2. ——— **Basis of decision of case**—*Pleadings.*—The determination in a cause must be founded upon a case, either to be found in the pleadings, or involved in, or consistent with, the case thereby made. *Eshen Chunder* v. *Shama Churn Bhutto, 11 Moore's I. A., 7,* referred to. MYLAPORE IYASAWMY VYAPOORY MOODLIAR *v.* YEO KAY
[I. L. R., 14 Calc., 801
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3. ——— *Exception to rule "Secundum probata et allegata"—Admission of defendant.*—The rule that the decree should be in accordance with what is alleged and proved is intended to prevent surprise, and is not applicable to a case in which the defendant's own admission is adopted as the ground of decision against him. APPAYYA *v.* RAMIREDDI . I. L. R., 11 Mad., 367

4. ——— **Amendment of case**—*Mistake or misapprehension.*—A plaintiff can be allowed to amend his case only when he has an honest case, but either through mistake or some misapprehension he has not placed the real facts before the Court. BHYRO DUTT *v.* LEKHRANEE KOOER
[16 W. R., 123

5. ——— *Civil Procedure Code, 1859, Operation of, as compared with old procedure in equity.*—Under the Civil Procedure Code, parties are not bound so strictly to the pleadings as in any equity suit under the old procedure, if their being so bound would work in justice. DOSSEE *v.* TARRACHURN COONDOO CHOWDHRY
[Bourke, A. O. C., 48

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

1. GENERAL CASES—*continued.*

6. ——— **Variance in plaint**—*Dismissal of suit, Ground for.*—*Held* by a majority that the Code of Civil Procedure does not require the dismissal of a suit by reason of any variance in the plaint. MAHOMED REEZAOODEEN *v.* HOSSEIN BUKSH KHAN . . . . 1 W. R., 300

7. ——— **Raising issues after variance is shown.**—A plaintiff will not be allowed to set up one case, and, having proved another, to ask for issues to be raised to suit the proof; but when a plaint and its proof necessarily lead to one or more particular issues, it is the duty of the Court, if these issues do not come by surprise on the defendant, to raise such issues, and to give the relief thereon to which the plaintiff is entitled. OBHOYCHURN MULLICK *v.* WOOMES CHUNDER PAUL . 2 Hyde, 263

8. ——— **Proof of cause of action not alleged**—*Dismissal of suit, Ground for—Claim on one cause of action, evidence showing another.*—Where a plaintiff sues on one cause of action and in support thereof gives evidence which, if it establishes anything, establishes a different cause of action, the Court acts properly in dismissing his suit. MUDHOOSOODUN GOSSAMEE *v.* HILLS . 10 W. R., 242

9. ——— **Amount proved exceeding amount claimed**—*Decree.*—Where the amount to which the plaintiff would be entitled on the evidence exceeds that specified in the plaint, plaintiff is restricted to the amount so specified. NATHOORAM *v.* JARDINE, SKINNER & CO. . . . Cor., 118

10. ——— **Presumption from failure to prove allegations**—*Onus of proof.*—An adversary is entitled to the benefit of such presumptions as naturally arise from a party's failure to prove his allegations, even though the onus was in the first instance on the former. GUNEE BISWAS *v.* SREE GOPAL PAUL CHOWDHRY . . . 8 W. R., 395

11. ——— **Failure to prove precise case pleaded**—*Decree, Right to.*—A previous ruling in *Beejoynath Chatterjee* v. *Lukhee Monee Dabee, 12 W. R., 248,* explained not to mean that a plaintiff must either get the thing he claims or nothing at all, but that having come into Court upon one title, which he asks to have declared and fails to prove, a plaintiff cannot claim the declaration of another. GOLUCK CHUNDER SIRCAR *v.* ISHAN CHUNDER DEB . . . . 23 W. R., 437

12. ——— **Suit for possession alleging fraud**—*Change to suit for redemption.*—Where in a suit for possession the plaintiff went to trial on the question of fraud, and that question was tried out, he is not entitled upon appeal to abandon that issue and to ask the Court to treat his suit as one for redemption. RAM DAO MONDAL *v.* INDROMONI DASI
[3 C. W. N., 325

13. ——— **Right to make party liable in different character**—*Suit against party personally—Representative's liability.*—In a suit to recover advances made to the defendant to carry on an

VARIANCE BETWEEN PLEADING AND PROOF—*continued*

1. GENERAL CASES—*concluded*

... [illegible] Tarbarnamah, in which it was ... [illegible]

to make the defendant personally [illegible] ... not be allowed to proceed against the defendant as representative of his father PERROUX *v.* LUCHMEEPUT SINGH 12 W. R., 113

1[illegible] ... defence—*De*[illegible] ... set up by defendant has entirely [illegible] ALI *v.* KIRIA 1 Agra, 278

1[illegible] ... up by de fen[illegible] ... by the defendant, but inconsistent ... statement SHURUT SOONDUREE DABEE *v.* PURESH NARAIN ROY 13 W. R., 464

RADHA BINODE DUTT *v.* KOOTABODE MUNDUL [15 W. R., 363

CHITTRA COOMARI BELEE *v.* RAM LALL MOOKERJEE 18 W. R., 334

RAJARAM BANERJEE *v.* SONATUN ROY [23 W. R., 404

2. SPECIAL CASES

16. ———— **Account, Suit for balance of**—*Failure to prove balance alleged—Issues—Civil Procedure Code 1859, s 141*—*Held*, in contravention of various rulings of the late Sudder Court, that a suit brought on an alleged settlement of a[illegible] and balance struck and admitted, should not [illegible] ... the plaintiff's ... [illegible] ... to determine the real [illegible] ... evidence ... [illegible]

BHAWANEE DEEN [Agra, F. B., 47: Ed. 1874, 35

RAMSAHOY *v.* SEETHOO [1 N. W., 28: Ed. 1873, 28

But when the issues had been framed solely on the alleged adjustment, the suit was held to be rightly dismissed NOBIN CHUNDER KOONDOO *v.* SREEDHUR BHUTTACHARJEE 15 W. R., 21

17. **Accretion**—*Gradual accretion to a formation of dry land already existing, and appropriated to an owner of land, on a river's bank—The ownership of the bed of the river was not the subject of contest below—Variation of claim disallowed*—Although there is not in Madras, as there is in Bengal, an express law embodying the principle that gradual alluvion enures to the land to which the accretion is made following the ownership of that land, the rule is equally well established in both those provinces. Both parties were riparian proprietors of adjoining estates on both banks of the river Godavari. The plaintiff claimed the right to newly formed land, in mid stream, which she alleged to have been formed by accretion upon an already existing lanka or alluvial island which belonged to her. On that point there were concurrent findings against her. The accretion had taken place upon a lanka owned, not by her but by the Government, and higher up stream than hers. *Held* that the plaintiff must abide by the ground of claim which she had presented below, that being that the new land was formed by gradual accretions to definite and visible [illegible] previously belonging to her. This ... [illegible] ... *v.* COLLECTOR OF THE GODAVARI DISTRICT [I. L. R., 22 Mad., 464 L. R., 26 I. A., 107

... [illegible] ground in the first Court the p[illegible] ... raised a new ground, *viz.*, that the alienation was bad, because under the Mitakshara law the owner of a share in a joint ancestral estate is not competent to alienate his share without the consent of the other heirs *Held* that such variance could not be allowed, and that the plaintiff must prove his case as laid in the plaint SRI PRASAD *v.* RAJ GURU TRIAMBUKNATH DEO 6 B. L. R., 555: 14 W. R., 386

19. **Alleged inconsistency in pleadings**—*Construction of solehnama*—*Fat[illegible]*—*Objection taken for first time in appeal*—After the death of a Hindu widow a suit was brought to have a sale of a portion of her husband's estate made by her set aside on the ground that the sale was invalid except in so far as it affected the rights of the widow herself therein. The plaintiff who was a collateral relation, alleged himself to be the heir and sued as such, but was not so in fact. It appeared, however, that a solehnama had been entered into between ... acquir[illegible] ... sui[illegible] ... taken ... the ground [illegible]

defendant was allowed to raise the same objection to the suit as he might have taken had it been brought by the heir. On appeal it was contended on behalf of the defendant that the plaintiff, having sued as heir, could not be allowed to succeed on the basis of the solehnama, as this would be contrary to the rule laid down in *Eshan Chunder Singh* v. *Shama Churn Bhutto, 11 Moore's I. A., 7. Held* that, if this objection had been taken in the first Court, the plaint and issues might and ought to have been amended, but as it was not so taken, and the substance of the case in the plaint was that the sale by the widow was invalid beyond her own interest, under the circumstances of the case there was no weight in the contention of the appellant. NURUL HOSSEIN *v.* SHEOSAHAI LAL

[I. L. R., 20 Calc., 1
L. R., 19 I. A., 221

20. ———————— *Failure to prove case—Raising fresh case on appeal.*—In a suit to set aside a sale of ancestral property by a minor's father and guardian as made without necessity and for the father's profligate expenditure, and without inquiry by the purchasers as to whether it was for the infant's benefit, the defendants alleged that the sale was made under pressure of a foreclosure suit on account of a demand under a former mortgage for an ancestral debt. Plaintiff, having failed to establish his case, sought to go back and open the consideration for the mortgage made so long as twenty years ago, but the Privy Council, agreeing with the High Court, refused to allow him to do so. HUMEEDA *alias* KHAJOO *v.* AMATOOL MEHDEE BEGUM

[17 W. R., P. C., 106

21. ———— Company—*Contributories, List of—Amendment of plaint.*—Where the holder of shares in a company was described in the list of contributories, against whom a balance order by the Court of Chancery had been made, as "Devji Bhanji, cotton merchant," and as being sued "in his own right,"—*Held* that the plaintiff's company could not be allowed to give evidence that the shares were in fact held by a firm consisting of two individuals named respectively Bhanji Zutani and Devji Hemraj; nor could the plaintiffs be allowed, at the hearing of the appeal, to amend their plaint, originally framed against both partners, with a view to making the firm liable for the amount of the calls, so as to sue Bhanji Zutani only, who alone was alleged to have signed the articles and memorandum of association in the name of Debji Bhanji, and to make him personally liable as the holder of the shares. *Weikersheim's Case, L. R., 8 Ch. Ap., 831,* distinguished. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* BHANJI ZUTANI

[I. L. R., 2 Bom., 116

22. ——— Compromise—*Failure to prove case—Right to succeed on ground not alleged.*—Where the plaintiff sued to have a deed of compromise set aside as having been fraudulently entered into behind his back and without his knowledge, and failed to prove any fraud or collusion,—*Held* that he was not entitled to a decree on the ground taken on appeal that the document was invalid as being unregistered, declaring that it did not affect his interests. MADHUB ALI KHAN *v.* HOSSAIN REZA KHAN

[4 C. L. R., 52

23. ———— Contract—*Assumption of facts. Decision on.*—The determinations in a cause should be founded upon a case either to be found in the pleadings or involved in, or consistent with, the case thereby made. Therefore, where the relief sought by the plaint is grounded on a contract, the case must not be determined upon an alleged equity resulting from a different state of facts and inconsistent with that alleged by the plaintiff. ESHAN CHUNDER SINGH *v.* SHAMACHURN BHUTTO

[2 Ind. Jur., N. S., 87: 6 W. R., P. C., 57
11 Moore's I. A., 7

Followed in DOSS RAM DOSS *v.* MOHENDRO ROY DECHA . . . . 18 W. R., 274

24. ———————— *Issues—Amendment of plaint—Variance between case in plaint and evidence.*—The plaintiffs sued the defendants for damages for breach of contract; alleging in their plaint that they had agreed to sell, and the defendants to purchase, certain indigo seed, but that the defendants had refused to take delivery, although the plaintiffs were ready and willing to deliver the same. Upon the evidence of the plaintiffs, it appeared that there was no contract as alleged in the plaint, but the contract, as stated by them, was that they (the plaintiffs) were to purchase seeds as agents for the defendants. The Judge dismissed the suit on the ground that the plaintiffs were bound to prove their case as stated in the plaint. *Held* that the suit ought not to have been dismissed on that ground. The issues raised admitted of the true question being tried, *viz.*, whether, under the circumstances, the defendants were liable to pay the price of the seed; and if they did not, the Court ought to have amended the issues, or framed additional ones. The object of the plaint is merely to bring the matter in dispute before the Court, but it is for the Court, upon the statements before it, to determine the real issue between the parties ARBUTHNOT *v.* BETTS

[6 B. L. R., 273: 14 W. R., 181

25. ———— Ejectment, Suit for—*Failure to prove lease—Reliance on general title, Right of—Case stated in plaint.*—Where a lessor sues to eject his tenant on the expiration of the latter's term, or for breach of the conditions of his lease, and fails to prove the lease, he is not ordinarily at liberty in the same suit, ignoring the lease, to fall back upon his general title as though he had not set up and failed to prove the alleged lease. A plaintiff must be limited to the case which he puts forward in his plaint, but he may put forward an alternative case in his plaint from the commencement, as the defendant then will know that he has more than one case to meet, and will not be taken by surprise. LAKSHMIBAI *v.* HARI BIN RAVJI . . . 9 Bom., 1

VARIANCE BETWEEN PLEADING AND PROOF—*continued*

2 SPECIAL CASES—*continued.*

26. ———— *Suit for ejectment against defendant as tenants and on failure as trespassers—Case set up in appeal which was not that set up in the Court of first instance*—The plaintiff came into Court on the allegation that she was the owner of a certain house, and that the defendants were her tenants at a certain rent, and she sought to eject the defendants for non payment [illegible] dants were trespassers, such plea having formed no part of the original case. *Held* that the plaintiff could not under the circumstances be heard in support of a new plea of which the defendants had had no notice until the case was in appeal. *Lakshmibai v. Hari bin Raoji, 9 Bom., 1,* referred to NAIKU KHAN *v* GAYANI KUAR . I. L. R., 15 All., 186

27. ———— *Suit for ejectment of defendants as trespassers—Decree declaring right to rent as landlord*—In a suit to eject the defendants as trespassers, although it was found that the latter were not so, the lower Appellate Court notwithstanding gave a decree declaring the plaintiff's title to receive rent from the defendants *Held* that the entire suit ought to have been dismissed, inasmuch as the defendants were not found to be trespassers on the allegations made in the plaint, and on the suit as framed the plaintiffs were not entitled to get any other relief than the particular relief which they asked for KALI KISHORE CHOUDHRY *v* GOPI MOHUN ROY CHOUDHRY 2 C W N., 166

28 ———— *Title to relief completed pending a suit—Amendment of plaint*—*A*, having leased land to *B*, sold it to *C* Persons having trespassed, *B* offered no objection, and it was alleged that he was in collusion with them *C* now sued before the expiry of the lease to eject the trespassers, the lease expired while the suit was still pending *Held* that the plaintiff was not entitled to the relief sought, and could not be permitted, on appeal, to amend the plaint by adding a prayer for a declaration of his reversionary right, although the acts of the defendants were such as to be prejudicial to his rights as reversioner RAMANADAN CHETTI *v* PULIKUTTI SERVAI [I. L. R., 21 Mad., 288

29 ———— Encroachment, Suit to pre- [illegible] CHOUDAS AMTHABHAI *v* MANEKLAL GORDHANDAS [I. L. R., 17 Bom., 648

30 [illegible] GUJADHUR PERSHAD NARAIN SINGH [22 W R., 231

31. ———— *Compromise by official assignee—Insolvent Act, 11 & 12 Vict., c 21, ss 28 and 29—Charges with a view to establish fraud—Practice—Pleading—Amendment of pleading—Restriction of power to amend*—The account of an estate formerly in the hands of a derivative executor who became insolvent and died in 1850, having been pending in Court for many years, some of the parties being interested in the original estate and others as the insolvent's creditors, a compromise was effected under which a suit, brought in 1858 by the Official Assignee, representing the deceased insolvent, was dismissed by the consent of parties in 1875 Part of a sum of money, paid to the credit of the insolvent's estate in pursuance of the compromise, was made over upon the passing of the consent decree, with the knowledge of the assignee, but without notice to, or the sanction of, the Court, to a person who had assisted in taking the account From the representatives of the latter, he being now deceased, the successor in office of the assignee claimed repayment The plaint, as presented, alleged the fraudulent concealment of the payment from the assignee Afterwards when all the evidence had been taken, and it had been established that the assignee knew of the payment, this was amended to the statement that, if he did know of it, he had no power to consent to it, and that his consent would not be binding, the payment being a fraud upon the Court. *Held* that the amendment at the stage when it was made was not permissible It is a well known rule that a charge of fraud must be substantially proved as laid, and that, when one kind of fraud is charged, another kind cannot, on failure of proof, be substituted for it. The High Court having decreed the claim on a finding of fraud different from either of the above—*Held* that on this ground alone the judgment might have been reversed. *Montesquieu* v *Sandys, 18 Ves Jun. 302,* followed. ABDUL HOSSEIN ZENAIL *v*. TURNER [I. L. R., 11 Bom., 620 L. R., 14 I. A., 111

32. ———— Hathchitta, Suit on—*Hathchitta given for amount of adjusted account—Failure to prove hathchitta—Frame of suit*—Where a suit was brought to recover a sum of money due on an adjusted account, for which it was alleged that the defendant had signed a hathchitta, and the lower Appellate Court dismissed it on the ground that the defendant never signed the hathchitta, and that the plaintiffs had failed to prove their case.—*Held* that having regard to the frame of the suit, the plaintiffs

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

ought not to be allowed to ask the Court to determine whether the original debt for which the hathchitta was given had been paid off as the defendant alleged, and the suit could not be treated as a suit for the original debt. GOSSAIN RAM KISSEN *v.* MIAH JAN SHEIK . . . 1 C. W. N., 710

33. ——— Mortgage—*Suit for redemption—Decree on mortgage set up by defendants and not on that alleged by plaintiff*—In a suit to redeem, the plaintiff produced a mortgage the genuineness of which the defendants denied, but they produced a mortgage from the plaintiff's ancestors to their ancestors. The Principal Sudder Ameen made a decree for the restoration of the lands according to the terms of the mortgage produced by the defendants. The Civil Judge reversed the decision. *Held* on special appeal that the Principal Sudder Ameen was justified in making the decree which he gave, it not being inconsistent with the relief prayed for by the plaint. UNICHA KANDYIB KUNHI KUTTI NAIR *v.* VALIA PIDIGAIL KUNHAMED KUTTI MARACCAR [4 Mad., 359

34. ——— *Suit for redemption—Evidence given of other mortgage than the mortgage in respect of which suit brought—Evidence Act, I of 1872, s. 35—Statement of a survey officer as to entry as occupant how far admissible.*—The plaintiff sued to redeem certain lands alleged to have been mortgaged by his ancestor to the ancestors of the defendants in 1823. At the hearing the deed of mortgage in respect of which the suit was brought was produced, but another mortgage of about the same date was produced and proved by the plaintiff. The lower Courts passed a decree for the plaintiff. The defendants appealed. *Held* (reversing the decree of the lower Courts) that where a particular instrument is sued on as the basis of a right, it is incumbent on the plaintiff to establish his case on that particular cause of action, not on a cause of action, merely bearing the same common name, or of the same description, and so included in the same class. Under s. 35 of the Evidence Act, I of 1872, a statement by the survey officer that the name of this or that person was entered as occupant would be admissible if relevant, but it would not be admissible to prove the reasons for such an entry as facts in another case. GOVINDRAV DESHMUKH *v.* RAGHO DESHMUKH [I. L. R., 8 Bom., 543

35. ——— *Change of nature of suit.*—The plaintiff sued to redeem a mortgage, alleging that it was made in the year A.D. 1821 for R25. The defendant admitted the mortgage, but alleged that it was made in A.D. 1791 for R110, and contended that the suit was barred by limitation. The Subordinate Judge held that the mortgage had been made for the amount and at the date alleged by the defendant, but that the suit was not time-barred, as the mortgagor's title had been acknowledged by the mortgagee within the period of limitation. He accordingly made a decree for redemption on terms consistent with the plea of the defendant, but opposed to that of the plaintiff. On appeal, the Assistant Judge agreed with the first Court as to the merits of the case, but reversed its decree on the ground that the plaintiff was not entitled to succeed on a state of facts inconsistent with the case set forth in the plaint, observing that a plaintiff ought not to be allowed to change his cause of action. *Held* by the High Court, on second appeal, that the decree made by the first Court in favour of the plaintiff did not in any way proceed upon a cause of action different from that made in the plaint, and that the cause of action remained the same, namely, the right of the mortgagor to redeem from a mortgagee. A plaintiff ought not to be allowed to alter his case so as to convert a suit of one character into a suit of another and inconsistent character. LAKSHMAN BHISAJEE *v.* HARI DINKAR DESAI . . . I. L. R., 4 Bom., 584

36. ——— *Alteration of case from that made in plaint.*—Upon a mortgage of land made little less than sixty years before the present suit, a decree followed in 1825 to the effect that an account having been taken of what was due on the mortgage, the mortgagor might at any time make a tender of such mortgage-money with interest up to date, and require that the land should be restored. The plaintiff, representing the interest of the original mortgagor, sued for redemption of the mortgage, treating the above decree as regulating the rights of the parties from the time when it was made. *Held* that the plaintiff, not having sought by his plaint to redeem the mortgage, or alleged that there had been acknowledgment, could not in the present appeal fall back on a right to redeem such mortgage, although the latter might be within limitation, as that would be to make a case different from the one tried and decided in the Courts below. Accordingly, the suit had been properly dismissed. HARI RAVJI CHIPLUNKAR *v.* SHAPURJI HORMASJI SHET [I. L. R., 10 Bom., 461

37. ——— *Suit for redemption by purchaser of equity of redemption—Evidence given by defendants of other mortgage than the mortgage in respect of which suit brought—Right of plaintiff to have plaint amended and the question of latter mortgage determined.*—The plaintiff as purchaser of the equity of redemption sued for redemption. He alleged a mortgage, dated A.D. 1849, for R175. The defendants admitted a mortgage, but alleged that it was executed at a different time and for a larger sum. After the evidence was given, but before the judgment was delivered, the plaintiff applied to amend the plaint and to set up the mortgage admitted by the defendants. His application was refused, and the Court dismissed the suit on the ground that he had failed to prove the particular mortgage alleged in the plaint. The District Judge confirmed the decree, but observed that there probably was a mortgage for the larger sum as alleged by the defendants. On second appeal,—*Held*, reversing the decree and remanding the case, that the plaintiff was entitled to have the question of the mortgage for the larger sum inquired into. CHIMNAJI *v.* SAKHARAM [I. L. R., 17 Bom., 365

VARIANCE BETWEEN PLEADING AND PROOF—*continued*

2. SPECIAL CASES—*continued*

38. ——— *Cause of action set out in plaint—Burden of proof—Civil Procedure Code (1882), s 50—Suit for redemption of mortgage*—A plaintiff is only entitled to succeed upon the cause of action alleged by him in his plaint So, where plaintiffs came into Court alleging a mortgage of the year 1854 made by their predecessor in title in favour of the defendant and seeking to redeem the mortgage of 1854, and it was found that the plaintiffs had failed to prove the mortgage of 1854, it was *held* that the plaintiffs were not entitled in that suit to a decree for redemption of other mortgages which might be found to subsist between the parties, but which formed no part of the cause of action upon which the plaintiffs came into Court.

[illegible]

Moore's I A, 7, referred to. *Lakshman Bhasaji Sirsekar* v *Hari Dinkar Desai*, *I L R*, 4 *Bom*, 584, and *Chimaji* v *Sakharam*, *I L R*, 17 *Bom*, 365, dissented from SHEO PRASAD *v* LALIT KUAR . I. L. R., 18 All., 403

39. ——— *Mortgage sued on not proved—Admission by defendants of mortgage right—Right of redemption.*—The plaintiff sued to redeem a kanom of 1859 The kanom was not proved, but it appeared that the defendants in possession had in various documents admitted that they were kanomdars under the plaintiff's predecessor in title. The Subordinate Judge held that the kanom to which the admissions related could not have been executed before 1823, which was less than sixty years from the date of some of the admissions, and he passed a decree for redemption *Held* that the plaintiff, having failed to establish the kanom on which the suit was based, should not have been allowed to fall back upon some other as to which the defendants had made the admissions in question KRISHNA PILLAI *v*. RANGASAMI PILLAI . I. L. R., 18 Mad., 462

40. ——— *Mortgage sued on inadmissible in evidence for want of registration—Secondary evidence—Inadmissible mortgage,*

[illegible]

two prior mortgages, dated 1856 and 1860, respectively. *Held* that the plaintiff was not entitled to a decree on the [illegible] which could [illegible] to redeem the [illegible] found to be genuine and [illegible] *v* PERIASAMI . . I. L. R., 19 Mad., 100

41. ——— *Suit for redemption of immoveable property brought as donee—Title of plaintiff as reversioner.* In a suit for the redemption of immoveable property brought by the plaintiff as donee from a Hindu widow of the equity of redemption, the plaintiff's right to the property as reversioner cannot be inquired into notwithstanding an allegation in the plaint that he was a near relative of the husband of the donor JAGANNATH VITHAL *v* APAJI VISHNU . 5 Bom., A. C., 217

42. ——— *Procedure*—Where a mortgagor sues to recover possession of the mortgaged property on the ground that the loan has been paid off from the assets of the estate and that he is entitled to recover surplus collections, and the Court finds that a large balance in favour of the mortgagee still exists, the plaintiff is not entitled to a conditional decree, but the suit should be dismissed KUNDUN LAL *v* SASTA KOOER SASTA KOOER *v* KUNDUN LAL 8 W R., 369

But *see* BOISTUB DOSS KOONDOO *v* HURO NARAIN HALDAR . . . 17 W R., 408

43. ——— *Usufructuary mortgage—Failure of claim to enforce lien—Compensation for breach of contract to give mortgagee possession*—A usufructuary mortgagee, the mortgagor having broken his agreement to give him possession of the mortgaged property, sued the mortgagor to recover the principal mortgage money and interest by enforcement of lien. The property was not hypothecated as security for the mortgage-money *Held* that it was inequitable to dismiss the suit for that reason, the defendant having been guilty of a

[illegible]

be awarded, the principal mortgage-money with interest at the rate specified in the contract of mortgage might fairly be taken as a reasonable guide. MAHESH SINGH *v* CHAUHARIA SINGH I. L. R., 4 All., 246

44. ——— *Usufructuary mortgage—Suit to enforce hypothecation—Compensation for breach of contract—Money lent—Money*

[illegible]

sum, which they were at liberty to do in the month of Jaith in any year they pleased. The mortgagors having failed to deliver possession of the mortgaged property, the mortgagee sued them for the principal sum and interest, asking for enforcement of lien. The instrument of mortgage did not contain any hypothecation of the property *Held* that, although the suit, so far as it sought enforcement of lien, wholly failed, there being no hypothecation of the

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

property, yet it was not equitable or proper that as regards the money-claim, the mortgagee should be relegated to a fresh suit, inasmuch as a cause of action was disclosed, whether the suit was regarded as one for compensation in damages for breach of contract, or for money had and received for the plaintiff's use, or for money lent, and the suit should be determined on its merits. SHEO NARAIN *v.* JAI GOBIND . . . . I. L. R., 4 All., 281

45. ———— Partition—*Failure of suit—Right to declaration of share.*—Where the main object of a suit framed and valued as a suit for partition of a portion of the estate fails, the plaintiff is not entitled to turn round and ask for a declaration as to the extent of his share. RUTTUN MONEE DUTT *v.* BROJO MOHUN DUTT . . 22 W. R., 333

Affirming S. C. . . . . 22 W. R., 11

46. ———— Possession—*Moveable property—Making different case on appeal.*—In a suit for delivery over to plaintiff of papers said to be in the possession of defendant, the answer of the latter was that he had made over the papers to the plaintiff's son. This plea was put in issue in the first Court, which found that some papers had been delivered as alleged, and made a decree ordering the delivery of certain other of the papers. On appeal, the attention of the Judge was principally directed to the point whether the receipt of the papers by the plaintiff's son was a receipt by him as plaintiff's agent. *Held* that this point was a departure wholly from the case made below, and ought not to have been entertained on appeal. PUNCHANUN ROY *v.* TROYLUCKHOMOHINEE DOSSEE . 14 W. R., 466

47. ———— *Immoveable property—Separate acquisition.*—*Held* that the question of possession was not a proper one for decision when a plea of limitation was overruled, and the claim was found to be based, not on the fact of possession, but of the claimant being a member of the joint family and the property acquired by joint funds. NUND RAM *v.* CHOOTOO . 1 Agra, 255

48. ———— Possession, Suit for—*Accrual of cause of action—Limitation*—In a suit by an execution-purchaser to recover possession of landed property, where defendant pleads limitation and plaintiff proves facts from which the Court is unable to draw conclusions of law for itself, plaintiff ought not to be strictly bound to the accrual of the cause of action alleged in his plaint, so long as that arose within twelve years before commencement of the suit. MARIAM BEGUM *v.* RYE CHURN DUTT [13 W. R., 269

49. ———— *Misdescription as to situation of lands—Identification.*—Where lands claimed under a certificate of sale as being in one village are found to be in another, it is open to the plaintiff to show that there has been a misdescription, and that, although the name of the former was used, the intention was to convey the lands he claimed situate in the latter. RAMGOPAL BARICK *v.* SHIB PERSHAD SIRCAR . . . 12 W. R., 483

50 ———— *Failure to prove pottah.*—In a suit for possession by two raiyats claiming under different pottahs from the same zamindar, when the defendant's pottah fails, he still has a right to have a judicial determination of his claim to occupancy. BYDNATH SHAHA *v.* JADUB CHUNDER SHAHA . . . . . 3 W. R., 208

51. ———— *Suit for possession on specific title—Right of occupancy.*—A plaintiff who succeeds in proving the facts stated in his plaint as necessarily implying a right of occupancy may succeed in a suit for possession, even though he does not prove the title on which he specifically relied. SURJOO PERSHAD *v.* KASHEE RAWUT [21 W. R., 121

52. ———— *Decree on ground not alleged in plaint.*—The plaintiff sued for a declaration of mirasi mokurrari rights to certain lands and for mesne profits, alleging that he had been wrongfully ejected by the predecessors in title of the defendant. *Held* that the lower Courts were wrong in giving the plaintiff a decree for possession on the ground of occupancy right, he not having claimed such relief in his plaint. *Bijoya Debia* v. *Bydonath Deb, 24 W. R., 444,* followed. BRINDABUN CHUNDER SIRKAR *v.* DHUNUNJOY NUSHKUR [I. L. R., 5 Calc., 246: 4 C. L. R., 443

53. ———— *Adverse possession—Issues.*—The plaintiff sued to recover possession of certain land alleging that it was lakhiraj land, which he had purchased from a third party. The Court of first instance found that he had not proved the title he alleged, and although it had been contended at the hearing that a title by twelve years' adverse possession had been proved, the Court held that it was not proved, and that, as it was not alleged in the plaint and no issue was raised as to it, the plaintiff was not entitled to succeed, and accordingly dismissed the suit. The plaintiff appealed, and one of his grounds of appeal was that he was entitled to succeed by virtue of the title of adverse possession proved. The lower Appellate Court considered that the plaintiff had proved that he and his vendor had held adverse possession for a period of over twelve years and gave the plaintiff a decree on the strength of that title. The defendant appealed to the High Court, and it was contended on his behalf that the plaintiff was not entitled to succeed upon a title of adverse possession when it was not alleged in his plaint, and no issue had been laid down in respect of it. *Held* that, as the suit was one for possession, and the defendant had express notice in the lower Appellate Court that the plaintiff relied on the title of adverse possession, and as he took no objection, on the ground that he should be allowed an opportunity to call evidence to rebut it, and as he had consequently not been prejudiced by the course adopted by the lower Appellate Court, the decree of that Court should be confirmed. *Bijoya*

VARIANCE BETWEEN PLEADING AND PROOF—*continued*

2 SPECIAL CASES—*continued.*

54. ———————— *Relief granted on a different ground from that asked for*—Plaintiff's suit was that they were co owners with *B* of a certain property as members of a joint family under the Mitakshara law; that after *B*'s death a 3¼ annas ... and ... *B*, ... ion ... gift was made of 1¼ annas share by *A* to her daughter ...

said. *A* died during the pendency of the suit It was found that plaintiffs were not co-owners with *B* as alleged, but that, as reversionary heirs, they became entitled to possession upon *A*'s death after the institution of the suit. *Held* that, as the plaintiffs had claimed to recover possession in the suit, and as *A* died before the case was taken up for trial, the plaintiffs were entitled to the relief, although they asked it on a ground different from that on which they recovered judgment RASUL JEHAN BEGUM *v* RAM SURUN SINGH . I. L. R., 22 Calc., 589

55. ———————— *Defendant sued as* ...

the suit must be dismissed, no matter what the character of that tenancy may be. RAM GOLAM SINGH *v* HEET NARAIN SAHOO 2 C L R, 293

56. ———————— *Failure to prove allegation of defendant's tenancy—Right to treat him as a trespasser.*—Where a plaintiff sued for khas possession on the ground that the defendant was his tenant and had forfeited his tenure by denying his landlord's title, and it was found that there was no relation of landlord and tenant between the parties, the plaintiff was held not entitled to succeed on the contention that the defendant was a trespasser. LALJEE SINGH *v.* BUNWARY LALL ROY [25 W. R., 418

57. ———————— *Failure to prove permanent character of tenancy—Right to decree as tenants*—In a suit for possession of land on the strength of an alleged mirasi mokurari, one of the main issues was whether the plaintiffs were or were not tenants of the land in dispute, and upon this issue it was found that the plaintiffs had acquired a title as tenants from long possession, although they failed to establish the mirasi mokurari character of their tenure. *Held* that the plaintiffs were entitled to a ...

[7 C L. R., 103

58. ———————— *Suit on ground of forcible dispossession where defendant's possession is found to be permissive*—A suit to recover posses- ...

possession not being a wrongful one of the kind alleged by plaintiff The right mode of action in such a case would have been for plaintiff to serve the defendant with notice to quit the land, and thereby put an end to the permission relied upon by him PHILLIPS *v* NUNDCOOMAR BANERJEE [8 W R, 385

59. A plaintiff's failure to prove dispossession on the particular date mentioned in the plaint is not a sufficient ground for the dismissal of the suit. HURO CHUNDER CHOWDHRY *v* GOBIND CHUNDER MOITRO . . . 16 W. R., 178

BOGA KOLITA *v* THOOLESSUR KAYASTA [24 W. R., 357

TORAB ALI *v* MAHOMED AMEER HOSSEIN [3 C. L. R., 105

60 ———————— *Suit for confirmation of possession—Proof that plaintiff was out of possession—Change in form of suit*—The plaintiff sued for an adjudication of his right to, and confirmation of possession of, certain lands, on the allegation that they had been conveyed to him by one of the defendants and that he was in actual possession thereof, and that his title thereto had been impeached by the subsequent sale of the same lands by his vendor to the other defendant. The Court of first instance found that the plaintiff's allegation of possession was false, and dismissed the suit. *Held*, on appeal, that the suit was rightly dismissed, for though a plaintiff who brings forward a *bonâ fide* case, which he proves in substance, though not in form, would be assisted by the Court, in the absence of such special circumstances no such assistance would be afforded. TEKIETUT SINGH *v* GOSSAIN SUDERSAN DAS . I. L. R., 4 Calc., 46

61. ———————— *Failure to prove case in plaint—Right to decree on other grounds*—At a sale held under Bengal Act VIII of 1865 the defendant purchased a shikmi tenure, and obtained possession thereof. Subsequently he ousted the plaintiff from certain lands and hence the suit by

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

the plaintiff for recovery of possession thereof, on the ground that the property in dispute was a lakhiraj tenure created by the Raja of Tippera, and that the plaintiff was owner thereof, partly by purchase and partly by inheritance. The lower Appellate Court found as a fact that the late shikmidar, and not the Raja, had granted the lands in dispute as bramatar, but not in favour of the person through whom the plaintiff claimed. The Court, however, passed a decree in favour of the plaintiff, as he had been unlawfully dispossessed. *Held* that the plaintiff, having failed to prove the case as set up by him and upon which he claimed, could not be entitled to a decree upon grounds other than those stated in the plaint. ISWAR CHANDRA CHUCKERBUTTY *v.* BISTU CHANDRA CHUCKERBUTTY

[3 B. L. R., Ap., 97 : 12 W. R., 32

62. ———— *Failure to prove case—Changing case on appeal.*—Each of two proprietors, *A* and *B*, separately mortgaged the whole of the joint property to different persons. *B*'s mortgagee, who was prior in time, obtained a decree on his bond, sold and purchased the house. In a subsequent suit for confirmation of right and possession by *A*'s mortgagee, he charged that the other bond and decree were fraudulent and collusive, and that *B* had no interest in the property. All these allegations were found to be false by the lower Appellate Court. *Held*, on special appeal, that the plaintiff could not recede from the case he had made in the lower Courts, and claim to be entitled to a decree for *A*'s interest in the house. DURSUN SAHOO *v.* PRYAG RAM

[2 C. L. R., 538

63. ———— *Failure to show alternative case—Right to change case in special appeal.*—Suit for possession of certain property as part of a joint family property sold by a widow without authority. Plaintiff applied to appeal specially on the ground, but could cite no authority in support of it, that when the eldest member and manager of the family purchases out of his own separate funds, because the family is joint, the property must be considered as joint property. Having failed in this character, the Court declined to allow him in special appeal to come in as a reversioner, and ask for a decree declaring the widow's act void as against reversioner. MADHO PERSHAD *v.* LALLA JEETUN LALL . . . 17 W. R., 98

64. ———— *Joint claim—Right to succeed on proof of separate title.*—Where the plaintiffs in a suit put forward a joint claim, it is not enough that one of them makes out his title; the suit should be dismissed unless the joint claim is established. RAM COMUL CHUCKERBUTTY *v.* NUND RAM COOLAL . . . 10 W. R., 262

SHEO NUNDUN PERSHAD *v.* MUKDOOM BUKSH

[20 W. R., 364

65. ———— *Joint claim—Right to succeed on proof of title to less share separately.*—A plaintiff, suing on the ground that she was jointly entitled, was not allowed to succeed in the suit where it was shown she was only entitled to a less share in her own separate right. HURRO MONEE DOSSEA *v.* ONOOKOOL CHUNDER MOOKERJEE

[2 W. R., 461

66. ———— *Claim to exclusive possession—Proof of right to joint possession.*—When a plaintiff in a suit asks for one thing (*e.g.*, exclusive possession), a Court ought not to give him a decree because he proves that he is entitled to another thing (*e.g.*, joint possession). BEEJOYNATH CHATTERJEE *v.* LUCKHEE MONEE DABEE

[12 W. R., 248

SREENARAIN CHUCKERBUTTY *v.* MILLER

[15 W. R., O. C., 7

67. ———— *Claim to separate possession—Proof of joint possession—Alteration of claim.*—When a plaintiff who claims property on the allegation that he purchased it from a person to whom it exclusively belonged, fails to prove that the property was the separate property of his vendor, he cannot have a decree for the share of the property to which his vendor was entitled as a member of a joint family. GOUR BEHAREE RAM BHUGGUT *v.* SHEORUTTUN KOONWAR . 10 W. R., 243

68. ———— *Suit for exclusive possession—Joint ownership proved at hearing—Procedure.*—Exclusive possession can only be awarded on proof of exclusive title. If a case not alleged by the plaintiff is disclosed in the evidence, the Court can allow it to be set up, provided a specific issue is raised on it, and the defendant is given an opportunity of meeting it. PARAHSRAM *v.* MIRAJI

[I. L. R., 20 Bom., 569

69. ———— *Suit for exclusive possession—Proof of hearing of joint ownership—Procedure.*—The plaintiff sued for possession of certain land. The lower Court held that the land was the joint property of the plaintiff and defendant, but finding that the plaintiff had been in exclusive possession allowed his claim and gave him a decree. On second appeal,—*Held* that exclusive possession could not be awarded unless exclusive title was proved. On plaintiff's application, which was not opposed by the defendant, the decree of the lower Court was varied, and the plaintiff was awarded joint possession of the property in suit. NANA *v.* APPA

[I. L. R., 20 Bom., 627

70. ———— *Failure of proof of right to sole possession—Decree on admission of defendant of joint possession.*—Where a plaintiff sued for sole possession and a declaration of sole title, and the defendant admitted that he was in joint possession, but the plaintiff went on with his suit in order to get a decree that he was solely entitled and in sole possession, and failed to prove his case, he was held not entitled to a decree founded on joint possession. LUKHUN SINGH *v.* NUFFUR SING

[16 W. R., 311

VARIANCE BETWEEN PLEADING AND PROOF—*continued*

2 SPECIAL CASES—*continued*

71. ——————— *Suit for posses-* [illegible]

[illegible] restoration to the sort of possession plaintiff had [illegible] that [illegible] that [illegible] the [illegible] tially right he ought to have a decree, and not be left to bring another suit RAJKISHORE BHUDDUR *v* HUREE MOHUN BHUDDUR 19 W. R., 195

Dissenting from BEJOYNATH CHATTERJEE *v* LUCKHEE MONEE DABEE 12 W. R., 248

72. *Claim to share of property as being partitioned—Relief inconsistent with allegations on plaint* —In a suit to recover a quantity of land alleged to have formed part of a joint estate which had descended to plaintiff and his brothers, but which was subsequently divided [illegible] found to be joint property FUKEER DASS POOROHEET *v* GOPAL MOOKERJEE 13 W. R., 107

73. ——————— *Suit for possession on allegation of partition—Failure to prove division Change of case on appeal.*—Plaintiffs, being members of a joint Hindu family alleging division and a sale to them by other members of their share in the family property more than twelve years before suit, sued to eject a more recent purchaser The plaintiffs failed to prove division as alleged One of the members of the family who was in possession of the property to which the sale deed related did not join in executing it *Held* that the plaintiffs, having failed to prove division as alleged, were not entitled in second appeal to have their suit treated as a suit for partition MUTTUSAMI *v* RAMAKRISHNA I. L. R , 12 Mad., 293

74 ——————— *Claim to property on separate title—Right to decree on joint title* —The plaintiff alleged in his plaint that the defendant had erected a hut, or challa, upon ground to which he, the plaintiff, was separately entitled. The lower Appellate Court found that the land in dispute was the joint property of both parties, and that the defendant was not at liberty to erect the hut *without the express permission of the plaintiff*, and ordered the demolition of the challa. *Held* that the plaintiff was not entitled to a judgment upon a ground which was inconsistent with the case set out in his plaint NABIN CHANDRA MITTER *v*. MAHES CHANDRA MITTER [3 B. L. R., Ap., 111: 12 W. R., 99

75. ——————— Pre-emption, Suit for— [illegible] out a new case as Shufeh Jah GOBIND ROW *v* GIRDHAREE SAHOO 24 W. R., 355

76 ——————— Principal and agent—*Suit by principal against agent—Failure of suit on grounds pleaded* —A bank sued H, its agent who had appointed N to act in the matter of the agency, for money belonging to it which *H* had paid N for the purposes of the agency and which was not accounted for by N, claiming the same on the *ground that N had been appointed to act as a sub-*agent without authority The lower Appellate Court found that *N* had been appointed by *H* to act in the matter of the agency with authority but instead of dismissing the suit with reference to this finding, gave the plaintiff bank a decree against *H* on the ground that he had not exercised ordinary prudence in selecting *N* as an agent for his principal *Held* that, inasmuch as the plaintiff bank had not claimed relief on the ground that *H* had failed in his duty in naming N as an agent for his principal, but on the ground that *N* had been appointed without authority and had failed to prove its case, the suit should have been dismissed HAMILTON *v* LAND MORTGAGE BANK OF INDIA [I. L. R., 5 All , 456

77 ——————— Rent—*Suit for arrears of rent —Failure to prove contract—Claim for use and occupation.*—Where a plaintiff sued for rent and failed to prove any contract, express or implied, to pay it, he was held not entitled to change his case and ask for compensation for use and occupation. LUCHMEEPUT DOSS *v* ENAET ALI 22 W. R., 346

78. *Suit for arrears of rent—Failure of plaintiff to prove alleged rate of rent—Ascertainment of proper rate—Duty of Court—Form of decree* —In a suit for arrears of rent at certain alleged rates in which the plaintiff fails to prove the rates alleged by him, it is not the duty of the Court to ascertain what were the fair rates, unless it is asked to do so. The case of *Punnoo Singh v Nirghin Singh, I L R , 7 Calc , 238*, does not lay down a contrary rule RASH BEHARY GOPE *v* KHAKON SINGH [I. L. R., 24 Calc., 433

79. ——————— *Suit for rent on unstamped lease—Failure to prove lease—Right to recover damages for use and occupation.*—The plaintiff alleged that he had given possession to the defendant of a certain estate, in consideration of the [illegible] possession; and he claimed to recover possession of

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

the property and a certain sum for its use and occupation by the defendant. He also claimed to recover the same sum as damages for the retention of the estate by the defendant, from the date up to which the defendant had last paid rent. The agreement between the parties was contained in certain letters which were unstamped. *Held* that, although the claim to relief made by the plaintiff on the basis of the contract must fail, because there was no evidence of the contract on which the Court could act, yet he could fall back on his claim to recover damages for the use and occupation of the land, as the defendant could not defend his possession, being equally incompetent with the plaintiff to rely on the terms of a contract of which he could not give proof, and as he did not deny the use and occupation alleged, he had no answer to the claim for damages. MACGIVERON *v.* WALLACE . . . . 5 N. W., 65

80. ———— *Suit for rent in kind—Evidence of nugdi rent.*—In a suit for a balance of rent on the allegation that defendants cultivated a portion of plaintiffs' jaghir as bhowli tenants, where defendants denied that they were such tenants and pleaded a mokurari pottah,—*Held* that, even on the defendants failing to establish their plea, the suit could not succeed, as the plaintiffs failed to make out their case, and it appeared that the defendants were holding the whole jaghir at a nukdi rent. LUCHMEEDHUR PATTUCK *v.* RUGHOOBUR SINGH . . . . 24 W. R., 284

81. ———— *Suit for declaratory decree—Suit under Bengal Rent Act, 1869.*—Where the plaintiff sued under Bengal Act VIII of 1869 for a declaration that certain land was mâl, as well as for assessment of rent thereon and for arrears of rent at the rate assessed, and the suit was dismissed, and on appeal the plaintiff abandoned the two last points in his claim and asked merely for a declaratory decree,—*Held* that the lower Appellate Court ought, notwithstanding the plaintiff had elected to sue under the Rent Act, to have proceeded with that part of the case, and disposed of the appeal as to that only. ANUND MOYEE DOSSEE *v.* RAYE MONEE DOSSEE . . . . . 20 W. R., 14

82. ———— *Suit for kabuliat on allegation of holding specific quantity of land—Failure to prove allegation.*—In a suit for a kabuliat, on the allegation that the defendant is holding a specific quantity of land under him, if the plaintiff's allegations are disproved, and the relation of landlord and tenant is not established, the plaintiff's suit must altogether fail. YAKOOB ALI *v.* KAERNOOLLAH . . . 8 W. R., 329

83. ———— *Suit for rent—Failure to prove kabuliat.*—The plaintiff, having sued for rent upon a kabuliat and failed to prove it, is not entitled to a decree if he shows that the defendants had paid him rent for a number of years, the Court observing that it would not be the exercise of a sound discretion to allow a party who relies upon a document to set up a fresh case when an issue as to the execution of such document is found against him, and there are good reasons for believing that the document is not genuine. NURROHURRY MOHONTO *v.* NARAINEE DOSSEE

[W. R., F. B., 23: 1 Ind Jur., O. S., 9
1 Hay, 234

S. C. NAIRAINEE DOSSEE *v.* NURROHURRY MOHONTO . . . . . . Marsh., 70

WOODOY NARAIN *v.* DURRIAHO ROY
[W. R., 1864, 187

RAM NAFFER KHARA *v.* DEGUMBER CHATTERJEE
[W. R., 1864, 259

KUREEMOODDEEN BISWAS *v.* HUROCHUNDER GOOHO . . . . . . 1 W. R., 305

GOVIND RAMCHANDRA GOKHLE *v.* AHMED
[5 Bom., A. C., 133

BHOYRUB CHUNDER CHOWDHRY *v.* HARADHUN GHOSE . . Marsh., 561: 2 Hay, 666

SIMROO KAREEGUR *v.* ANUND CHUNDER ROY
[Marsh., 57: Hay, 130

See also JEETOO *v.* BEETUN
[Marsh., 47: 1 Ind Jur., O. S., 85:
1 Hay, 112

FATIMA BEBEE *v.* ARIF SOOKANEE
[Marsh., 263: 2 Hay, 106

So also in the case of a defendant. GOOROO DOSS GHOSE *v.* SRISTEE DHUR DAY
[W. R., 1864, Act X, 39

84. ———— *Suit for pottah at fixed rate of rent—Failure in proof.*—In a suit brought by a raiyat to obtain a pottah at a fixed rent, under s. 3 of Act X of 1859, on the ground that the lands have been held at a fixed rent which has not been changed from the time of the permanent settlement, if the plaintiff fail in proving such a holding, he is not entitled in that suit to have a decree under s. 5 for a pottah at a fair and equitable rate. DOORGA MAHTOON *v.* KANHYE LALL AJHA
[Marsh., 371: 2 Hay, 422

85. ———— *Suit on kabuliat which plaintiff fails to prove.*—Plaintiff sued upon a kabuliat, and filed a pottah in support of it. The pottah having been rejected, and the kabuliat not proved, he was held not entitled to fall back on a general statement that he has a jote pottah; that the lands in dispute are part of the same; and that he can oust the defendant, who was duly in possession. GOBIND CHUNDER LAHORY *v.* JARDINE, SKINNER & CO. . . . . 7 W. R., 163

86. ———— *Failure to prove right to pottah—Right to have fair and equitable rate of rent fixed as occupancy raiyats.*—The plaintiffs sued as raiyats to obtain a pottah corresponding with a kabuliat which they said had been taken from them by the defendants, who were 12-anna shareholders in the land, and, according to an alleged promise, to give them a pottah. The plaintiffs failed to make out the ground on which they relied, but the lower

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

Appellate Court, being of opinion that the plaintiffs had made out a right of occupancy under the rent law and were entitled to obtain a pottah from the [illegible]

be determined, and as it rested on a ground not taken by the plaintiffs, who came into Court on a special contract If the plaintiffs' right to a pottah had rested on the ground of their being occupancy raiyats, they might claim a pottah from all the 16 anna shareholders, who ought to have been made parties and the case remanded for trial by the first Court. UTHUR HOSSEIN *v.* RAMPHAL ROY

[20 W. R., 75

87. ———— *Suit for rent—Failure to prove kabuliat* —Where a landlord sued a raiyat for arrears of rent alleged to be due under a kabuliat, and the Court found that such kabuliat had not been executed by the raiyat, although he had occupied the land, the landlord was held not entitled to have a further trial of the question whether any and what amount of rent was due on account of the raiyat's occupation of the land. LUKHEE KANTO DASS CHOWDHRY *v.* SUMEERUDDI LUSKER

[13 B. L. R., F. B., 243: 21 W. R., 208

88. ———— *No alternative claim for use and occupation—Damages for use and occupation.*—In a suit for rent, when no alternative claim is made for use and occupation, no damages can be decreed for use and occupation *Lukhee Kanto Dass Chowdhry v. Sumeeruddi Lusker 13 B L R, 243 21 W. R., 208,* and *Surendra Narain Singh v. Bhai Lal Thakur, I L R, 23 Calc, 702,* referred to and followed. *Nityanund Ghose v. Kissen Kishore, W R, Sp No., Act X, 82,* and *Lalun Monee v. Sona Monee Dabee, 22 W R, 334,* distinguished. RACHHEA SING *v.* UPENDRA CHANDRA SINGH . . . I. L. R., 27 Calc., 239

89. ———— *Suit for enhancement of rent—Suit on kabuliat—Amendment of plaint—Decree for rent on failure to prove kabuliat* —In a suit on a kabuliat, where no alternative claim for rent at an old rate is in words expressly asked for in the plaint (although it is disclosed by the plaint that the defendant had previously occupied the land in suit at a rate which the evidence proved to be lower than the rent mentioned in the kabuliat), and where the kabuliat is not proved, it is in the discretion of the Court to amend the plaint or the issues, and to allow an alternative claim to be tried, and when the omission to make the claim in the plaint appears to have been an inadvertence, it is right that the Court should do so. *Lukhee Kanto Dass Chowdhry v. Sumeeruddi Lusker, 13 B. L. R, 243,* commented upon. ROUSHAN BIBEE *v.* HURRAY KRISTO NATH

[I. L. R., 8 Calc., 926

90. ———— *Suit for enhancement of rent—Statements in plaint* —Although in a suit for enhancement the plaintiff should not be tied down too strictly to his statements yet he must to some extent be limited to the case made in the plaint. BONOMALEE CHUCK MYTEE *v.* SHOROOP HOOTAIT

[14 W. R., 60

91. ———— *Suit for enhancement of rent—Failure to prove rent as claimed* —If the plaintiff is unable to show that he is entitled to the rent exactly as he claims it, the Court is not debarred from giving him a decree for such enhanced rent as it thinks ought to be paid, *e.g.*, to divide the land into different classes and assign a separate rental to each description BHUGWAN CHUNDER ROY CHOWDHRY *v.* JEACE KHAN

[23 W. R., 456

92 ———— *Suit for enhancement of rent—Failure to prove notice* —In a suit originally treated by the plaintiff as a suit for enhancement of rent, he cannot, after failing to prove notice, treat the suit as one for enhancement, and say no notice was necessary RASH BEHARY MOOKERJEE *v.* KHETTRO NATH ROY . I C L. R., 418

93 ———— *Suit for enhancement of rent—Suppression of material fact* —A plaintiff must state clearly in his plaint the substance of his claim, *i.e.*, the particular mode in which his claim arose, as well as the amount of that claim Thus, where a plaintiff allowed the Court below to decide the case as if his contention was an ordinary case between a landlord suing to enhance and a tenant resisting his claim, and the statement of the defendant divulged the material circumstances of the case that the plaintiff's estate was let in farm, the High Court refused to allow the plaintiff on appeal to rest upon an alleged stipulation in a farming lease, the existence of which he altogether suppressed in the Court below, reserving to him the right of collecting from the tenantry an enhanced rent during the currency of the farming lease HURRO SOONDEREE *v.* MUDDUN MOHUN DUTT

[W. R., 1864, Act X, 31

94. ———— **Right of suit**—*Cause of action not shown in plaint, but proved in course of case* —Where a plaintiff brought a suit for confirmation of his title to an estate, in consequence of the opposition offered by defendant to an application for partition by a vendee who had purchased a portion of plaintiff's share and the Court of first instance tried the case [illegible]

of action, yet, on the trial of the suit on its merits, a cause of action had been disclosed in the opposition which defendant had offered to the partition proceedings, and which had interfered with the enjoyment of his rights by the plaintiff. LALLAH MAHTAB ROY *v.* DEBEE DUTT SINGH . 25 W. R., 204

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

2. SPECIAL CASES—*continued.*

95. ——— **Specific performance**—*Suit to enforce contract of betrothal—Failure to prove complete betrothal.*—The plaintiff, on behalf of her infant son, sued the father and guardian of *M B* to recover possession of *M B*, alleging that *M B* had been betrothed to her son, and that under the Hindu law a betrothal was the same as marriage and could not be repudiated, and that the defendant had on demand refused to give up *M B*. *Held* that, the suit having been brought on the allegation of a perfect betrothal equivalent to marriage, it could not be tried and decided by the Court as if it were a suit for damages on account of breach of contract. NOWBUT SINGH *v.* LAD KOOER . **5 N. W., 102**

96. ——— **Title**—*Setting up different title from that alleged.*—The plaintiff cannot be allowed to set up a different title from that on which he sues and fails to prove. ISHAN CHUNDER CHOWDHRY *v.* SHARODA GOOPTEAH . **12 W. R., 487**

97. ——— *Suit for recognition of adoption—Right to show title by inheritance.*—A distinct suit for the recognition of an adoption having totally failed, the plaintiff is not entitled to fall back on his right by descent. SREEGOBIND SINGH *v.* ODIT NARAIN SINGH **W. R., F. B., 4**

98. ——— *Failure to prove adoption—Right to succeed by inheritance—Civil Procedure Code, s. 146—Failure of plaintiff to prove unnecessary averments—Decree on admission of defendant.*—In a suit brought by an undivided member of a Hindu family to set aside a sale made by the managing member and to recover a moiety of the land sold, the plaintiff alleged that he had been adopted by his deceased uncle and claimed as adopted son. The purchaser denied the adoption, alleged that plaintiff was the natural brother of the vendor, and justified the sale under Hindu law. The lower Courts found that the adoption was not proved, and, on the plaintiff urging that if the adoption was not proved, yet he was entitled to recover by virtue of the admission that he was the natural brother of the vendor, held that the latter claim was inconsistent with the claim as adopted son. The suit was therefore dismissed. *Held*, on appeal, that the suit was improperly dismissed, and that, if the purchaser could not justify the sale, the plaintiff was entitled to succeed. The rule that the decree should be in accordance with what is alleged and proved is intended to prevent surprise, and is not applicable to a case in which the defendant's own admission is adopted as the ground of decision a gainst him. APPAYYA *v.* RAMIREDDI **[I. L. R., 11 Mad., 367**

99. ——— *Title of separate acquisition by purchase—Setting up inconsistent title by joint purchase.*—The plaintiff, having set up a title by sole purchase, was held not at liberty to change his case entirely, and to come in and set up another and inconsistent title, founded on inheritance or joint purchase. DOSS RAM DOSS *v.* MOHENDRO ROY DECHA . . . . **18 W. R., 274**

100. ——— *Allegation of title by purchase—Failure to prove alleged title—Possession, Title by.*—In a suit for declaration of title to and possession of certain property on the allegation of purchase and subsequent forcible ouster it was held that the plaintiff, having failed to prove the purchase or the forcible dispossession, could not succeed on mere proof of twenty years' possession. A plaintiff who sues on one title cannot succeed on another entirely different. HURO SOONDUREE DEBIA *v.* UNNOPOORNA DEBIA . **11 W. R., 550**

BIJOYA DEBIA *v.* BYDONATH DEB **[24 W. R., 444**

101. ——— *Failure to establish particular title—Title by long possession.*—Where a plaintiff brought a suit to establish his title, and the lower Court, on a trial of the issue, thought the title was not proved, yet gave plaintiff a decree on the ground of his being in possession for a long time,—*Held* that the lower Court ought not to have given a decree upon a ground not suggested in the plaint or in the issues tried. BHAYGO MUTTY BIBEE *v.* MAHOMED WASIL **[25 W. R., 315**

102. ——— *Failure to prove particular title—Title by right of occupancy—Act X of 1859, s. 6.*—In a suit for possession of land after purchase, where defendant pleaded that he had long held under a miras pottah which both the Courts below found to be false,—*Held* that the defendant could not be allowed in special appeal to come in for the first time with an allegation of a new and separate title, *viz.*, a right of occupancy under s. 6, Act X of 1859. SOORJO KOOMAR *v.* GUNGADHUR ROY . . . . . **12 W. R., 80**

103. ——— *Failure to prove specific title—Title by possession—Form of plaint.*—Where a plaintiff who fails to prove a specific title which he sets up, yet causes it to appear that he has had a clear *bonâ fide* possession from which the Court can infer a good title, the Court will not shut him out in consequence of the mere form of the plaint. KYLASH KAMINEE DOSSIA *v.* JUDOO BASHINEE DOSSIA . . . **22 W. R., 391**

104. ——— *Allegation of mokurari right and failure to prove it.*—In a suit to recover possession of land which defendant alleged himself to have held for more than twelve years under a mokurari lease, where the lower Appellate Court, finding that defendant failed to prove his mokurari right, declared he had no title to hold as a squatter,—*Held* that, notwithstanding the failure of the defendant to prove his mokurari lease, the lower Court ought to have found what was the nature of the occupancy, and how long it had subsisted. JORAWUR SINGH *v.* KHYRAT ALI **[10 W. R., 360**

105. ——— *Suit in one capacity, proof of right to succeed in another.*—A suit was brought by a Hindu widow to recover her share

VARIANCE BETWEEN PLEADING AND PROOF—*continued*

2. SPECIAL CASES—*continued.*

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perty.
the ... not maintained the allegation in her plaint ... even if entitled to it in her right of joint shebait, she could not recover in that capacity, as she had not framed her plaint in that way and had not sued as shebait. The Privy Council held the High Court to be right in treating this objection as one rather of form than of substance, and in giving the relief prayed for. RADHA MOHUN MUNDUL *v.* JADOOMONEE DOSSEE . 23 W. R., P. C., 369

106. ——— *Amendment of plaint—Alternative relief—Ejectment suit—Failure to prove lease—General title.*—Where, in an ... a tenant holding over,
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v. VASUDEV ... [I. L. R., 10 Bom., ...

107. ——— *Right to easement in suit for right of ownership—Decision on case not made in pleadings.*—In a suit brought to establish a right of ownership over certain land,— ... Court to enter
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RATANJI *v.* GANGARAM ... [2 Bom., 184 2nd Ed., 178

108. ——— *Title by prescription—Making case different from that in plaint.*—In a suit for the removal of a pucca building recently erected by defendant upon land lying between the premises of the two parties to the dispute, where plaintiff's claim to use the land had been put upon his title as owner,—*Held* that, having failed to make out the case originally set forth in the plaint, plaintiff had no right to fall back upon a title by prescription. BHOOBUN MOHUN MUNDUL *v.* RASH BEHAREE PAUL . 16 W. R., 84

109. ——— *Suit by decree-holder to declare a house subject to attachment in execution as being the property of the judgment-debtor—Decree for plaintiff on ground that judgment-debtor, though not the owner of the house, had an attachable interest in it as permanent tenant—New case made on appeal.*—The plaintiff's case being that a certain house was the absolute property of his judgment-debtor, and that therefore he (the plaintiff) was entitled to attach it in execution of his decree, the Subordinate Judge found that the judgment-debtor was not the owner of the house, and rejected the plaintiff's claim. The Appellate Court held that (though the judgment-debtor was not the owner) he had an attachable interest in the house as permanent tenant, and allowed the plaintiff's claim. On appeal to the High Court by the defendant,—*Held* that the order of the Appellate Court made out an entirely new case for the plaintiff which he had not made himself at any period of the trial, and that the decree of the lower Appellate Court should be reversed. IRANGOWDA *v.* SESHAPA I. L. R., 17 Bom., 772

3. ADMISSION OF PART OF CLAIM

110. ——— *Suit for rent—Failure to prove jummabundi—Form of decree.*—The plaintiff sued for rent at R22 a year on a jummabundi, which he alleged was signed by all the raiyats when he came into possession; the defendant denied that he was a party to the jummabundi but admitted that he held some portion of the land as tenant of the plaintiff at a yearly rent of R5, and that the balance due by him to the plaintiff was R5 15. The plaintiff failed to prove the jummabundi. *Held* the plaintiff must, if he accepted the admission of the defendant at all, accept it as a whole, and was therefore only entitled to a decree for R5 15, and not to a decree for all the years for which he claimed rent at R4-13 per annum. BONOMALEE CHUCK MYTEE *v.* HAFIZUDDEEN [13 B. L. R., 247 note: 13 W. R., 317

And *see* LUKHEE KANTO DASS CHOWDHURY *v.* SUMERRUDDI LUSKER [13 B. L. R., F. B., 213: 21 W. R., 317

and ROUSHAN BIBEE *v.* HURRAY KRISTO NATH [I. L. R., 8 Calc., 926

111. ——— *Dismissal of suit on failure to prove it—Right to decree on defendant's admission.*—Where the plaintiff brought a suit for ... years, which he alleged
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v. LAJOO DEY [13 B. L. R., 245 note: 10 W. R., 231

ROOKHINI KANT ROY *v.* SHARIKATUNNISSA BIBI [13 B. L. R., 246 note: 20 W. R., 64

RAJ COOMAR SINGH *v.* CHOTO RAJ COOMAR SINGH . W. R., 1864, Act X, 13

HULODHUR SEN *v.* SEETUL CHUNDER BHOOMICK [23 W. R., 85

VARIANCE BETWEEN PLEADING AND PROOF—*continued.*

3. ADMISSION OF PART OF CLAIM —*continued.*

112. ———— *Failure to prove case—Right to decree on admission of defendant—Dismissal of suit.*—In a suit for rent, based upon an alleged settlement, the plaintiff failed to prove such settlement. *Held* that, no issue having been raised as to what was the fair and proper value of the land, the plaintiff was not entitled to have that question determined: his suit must either be decreed at the rate admitted by defendant, or dismissed. LUTE ALI KHAN *v.* FAKIRA SINGH . 6 C. L. R., 208

113. ———— **Suit for arrears of rent.**—*Failure to prove rate—Decree at admitted rate.*—In a suit for arrears of rent, where the plaintiff fails to prove the rate of rent claimed in the plaint, it is the duty of the Court to find the proper rate of rent payable by the tenant to his landlord, and not to give a decree merely for the rent admitted by the tenant. PUNOO SINGH *v.* NIRGHIN SINGH

[I. L. R., 7 Calc., 298: 8 C. L. R., 310

114. ———— *Suit on new agreement—Failure to prove agreement—Decree at admitted rate.*—The defendant held lands under the plaintiff at a certain rate per bigha. The plaintiff brought a suit for arrears of rent on a new agreement alleged to have been entered into by the plaintiff and the defendant, whereby the latter agreed to pay a higher rate per bigha. The lower Appellate Court found that the new agreement had never, in fact, been entered into, and gave a decree for the old rate of rent without going into the question whether it was a fair rent or not. *Held* that the decision was correct. SUFDAR REZA *v.* AMZAD ALI

[I. L. R., 7 Calc., 703: 10 C. L. R., 121

115. ———— *Failure to prove rent in kind—Failure to prove case—Decree on admission of defendant for money rent.*—In a suit for arrears of rent, as bhowli rent, where the plaintiff failed to make out his title to bhowli rent or rent in kind, the first Court, finding that the evidence established a commutation of bhowli rent into rent in money, dismissed the suit with a reservation of the plaintiff's right to sue again for nagdi rent. The lower Appellate Court, agreeing in the first Court's view of the facts, and finding that the defendant admitted that he owed rent in money, decreed the claim to the extent of the admission. *Held* that the lower Appellate Court was right, and that the reservation of right by the first Court was of doubtful operation. BIBEEJAN *v.* BHAJUL SINGH . 21 W. R., 438

116. ———— **Omission to make alternative claim**—*Suit for rent—Beng. Act VI of 1862, s. 10.*—In a suit for rent, where the claim was at the rate fixed by the revenue officer acting under Bengal Act VI of 1862, s. 10, and was dismissed on the ground that that officer had not the power to assess such rent as he thought proper,—*Held* that the plaintiff, whose claim was not in the alternative, was not entitled to a decree at the rate previously paid. DWARKANATH BOSE *v.* RAM LOCHUN BOSE

[23 W. R., 465

VARIANCE BETWEEN PLEADIN AND PROOF—*concluded.*

3. ADMISSION OF PART OF CLAIM —*concluded.*

117. ———— **Suit for ejectment**—*Entr under unregistered lease—Holding over—Lana lord and tenant—Proof of terms of lease—Decre for rent upon admission of different tenure b defendant.*—The plaintiff sued in 1881 to recove certain land and arrears of rent from the defendant alleging that the defendants' ancestor entered on the land as tenant in 1865, under a lease for five years which was not registered. The defendant denied the lease of 1865, admitted that she was the tenant of the land, but denied that she could be ejected, and claimed to deduct from the rent certain emoluments. *Held* (1) that the plaintiff could not prove the tenancy alleged in the plaint, inasmuch as the lease of 1865 was not registered, and therefore could not eject the defendant; (2) that the plaintiff was entitled, upon the defendant's admission, to recover from the defendant, in this suit, the amount of rent admitted to be due, and no more. NANGALI *v.* RAMAN . . . I. L. R., 7 Mad., 226

VATAN.

See COLLECTOR I. L. R., 18 Bom., 103

See CASES UNDER HEREDITARY OFFICES ACT (BOMBAY).

See CASES UNDER SERVICE TENURE.

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See CASES UNDER JURISDICTION OF CIVIL COURT—OFFICES, RIGHT TO.

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———— **Petition by**—

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VENDOR AND PURCHASER.

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See Sale in Execution of Decree—Person selling Property of which he is not, but afterwards becomes, Owner . . I. L. R., 4 Calc, 677

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VENDOR AND PURCHASER—*continued.*

1. BILLS OF SALE.

1. ———— **Effect of execution of bill of sale without delivery**—*Specific performance.*—It is very questionable in any case whether the effect of the execution of a bill of sale by a Hindu vendor is to pass an estate, irrespective of the actual delivery of possession. Where the vendor sells an estate of which he is not in possession, in consideration of advances to enable him to sue for its recovery, it is not open to the purchaser, after failing to complete his part of the contract, to claim specific performance and delivery of the recovered estate on tendering the balance of the purchase-money Prahlad Sen v. Budhu Sing Kaliprasad Tewari v Prahlad Sen
[2 B. L. R., P. C, 111: 12 W. R., P. C., 6

S. C. Perhlad Sein v. Budhoo Singh Kalipershad Tewaree v Perhlad Sein
[13 Moore's I. A , 275, 282

2. ———————— *Suit to compel transfer of property*—When a bill of sale, though signed and registered, has not been delivered, and no part of the purchase-money has been paid, the vendor cannot be compelled to complete the transfer. Lalla Indurjeet Lall *alias* Gujadhur Pershad v Jumoona . . 5 W. R., 248

3. ———————— *Incomplete contract*—A bill of sale, though duly executed, was not delivered to the purchaser, but was deposited with a third party, to be held by him until the purchaser should perform certain acts, the performance of which was the consideration for the sale. The purchaser subsequently by a trick got possession of the bill of sale before he had performed all the acts in question. *Held* that, under such circumstances, no effect could be given to the bill of sale as against the vendor, so that a suit for possession of the lands covered by it would not lie. Raj Chunder Chowdhry v. Raj Nath Chowdhry
[W R., 1864, 222

4. ———— **Vendor under bill of sale remaining in possession**—*Allegation of fraud*—*Suit to set aside bill of sale*—When a person grants a bill of sale to another person absolute in its terms, he cannot sue to have it set aside on the

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of non-payment Tekait Meghraj Singh v Joymungul Singh 1 Ind. Jur., N. S , 78

5. ———— **Bill of sale as construed by intention of parties**—*Right of purchaser to sue.*—Cases will often arise in which, though a bill of sale may in terms purport to convey the property itself, yet it is clear upon the face of the instrument that the intention of the parties was to convey the right of entry or the equity of redemption, and nothing more. In such cases the Court should not lay stress on the mere terms of the instrument, but give effect to the intention of the parties, and recognise

VENDOR AND PURCHASER—*continued.*

1. BILLS OF SALE—*concluded.*

the purchaser's right of action to eject the trespassor or to redeem the mortgage. BAI SURAJ *v.* DALPATRAM DAYASHANKAR . I. L. R., 6 Bom., 380

2. BREACH OF COVENANT.

6. ——— Covenant to restore estate to original owner or heirs at fixed price before selling to another—*Sale under reservation to keep in actual possession or re-sell it to vendor at fixed price—Subsequent alienation—Right of reconveyance.*—Where a share in an estate had been sold under a stipulation that the purchaser should possess it himself as landlord, or, if desirous of parting with it, should restore it to the original owner or his heirs at a fixed price; and the purchaser, having been restrained by this agreement from selling off this property to a third person, had, on his retirement to England, given other persons a farming lease of it for fifteen years,—*Held* that, as the object of the original stipulation was to secure the constant possession of the share to some one with whom the original owner or his heirs, who still retained the residue of the estate, could keep up friendly relations, the grant of the farmer's lease was a violation of the covenant; and that the heirs of the original owner were entitled to have the share in suit conveyed to them at the stipulated price. RAMNATH SEN LUSHKUR *v.* WISE . 25 W. R., 378

7. ——— Covenant repugnant to interest created—*Contemporaneous "ikrarnamah—Condition restraining alienation.*—*M*, a co-sharer in a village, transferred to *A*, another co-sharer, a 2 annas share by deed of sale. Upon the same date *A* executed an ikrarnamah, in which he agreed that he would not collect the rents of the 2 annas transferred to him, that he would not ever demand partition of that share, and that he would not alienate or mortgage it or otherwise exercise proprietary rights over it. It was further provided that in the event of *A* committing any breach of covenant the sale should be avoided, and the proprietary rights in the 2 annas share should re-vest in *M*. *Held* that the deed of sale and the ikrarnamah must be regarded as recording one single transaction, *i.e.*, they must be read together as stating the nature of the transaction entered into upon that date between the plaintiff and the defendant, which on the face of it professed to be a sale of a 9 annas share to the other by the former; and that, in this view, it was clear from the ikrarnamah that the proprietary title created by the sale-deed was cut down to *nil*, and limitations placed upon it which rendered it useless as a proprietary right. *Situl Purshad* v. *Luchmi Purshad, I. L. R., 10 Calc., 30,* referred to. MAHRAM DAS *v.* AJUDHIA . I. L. R., 8 All., 452

8. ——— Implied covenant for title—*Transfer of Property Act (IV of 1882), s. 55, sub-s. 2—English Conveyance Act of 1881, 44 & 45 Vict., c. 41, s. 7.*—In the absence of any contract to the contrary, there is, under s. 55, sub-s. 2, of the Transfer of Property Act, an implied covenant for title on the part of the vendor. BASARADDI SHEIKH *v.* ENAJADDI MALEAH . I. L. R., 25 Calc., 298
2 C. W. N., 222

9. ——— *Breach of implied covenant for title—Transfer of Property Act (IV of 1882), s. 55 (2)—Covenant for title, Waiver of—Fraud.*—When a vendee, who sues to cancel a sale on the grounds of fraud, misrepresentation, or concealment by his vendor, fails to establish these grounds of relief, he is not entitled to set up in second appeal a case founded on the implied covenant for title under the Transfer of Property Act, s. 55, sub-s. (2). MAHOMED *v.* SITARAMAYYAR . . [I. L. R., 15 Mad., 50

10. ——— *Breach of covenant for title—Measure of damages.*—A purchaser evicted from his holding is entitled to recover from a vendor who has guaranteed his title the value of the land at the date of the eviction. NAGARDAS SAUBHAGYADAS *v.* AHMEDKHAN . [I. L. R., 21 Bom., 175

11. ——— *Transfer of Property Act (IV of 1882), s. 55—Suit for damages for breach of covenant implied in registered sale-deed.* —On 8th February 1889 the defendant sold to the plaintiff, under a registered conveyance containing no express covenant for title, land of which he was not in possession, and the purchase-money was paid. The plaintiff and the defendant sued to recover possession, but failed on the ground that the vendor had no title. The plaintiff now sued on 7th February 1895 to recover with interest the purchase-money and the amount of costs incurred by him in the previous litigation. *Held* that the plaintiff was entitled to the relief sought by him. KRISHNAN NAMBIAR *v.* KANNAN . . . I. L. R., 21 Mad., 8

3. BREACH OF WARRANTY.

12. ——— Suit on warranty—*Knowledge by purchaser of title being doubtful.*—A purchaser, aware of the doubtful character of the title to the estate he is about to purchase, is justified in taking a guarantee from the seller, who cannot successfully plead to a suit on the guarantee that the purchaser was aware of the facts which induced him to stipulate therefor. PATHOO LAL *v.* RADHIKA DOSS [3 N. W., 106

13. ——— *Sale of whole title—Failure of title—Suit for money had and received.*—A vendor legally conveying all his title cannot be sued for money had and received, although the title prove defective. Accordingly, where the plaintiff bought two kanam claims, and sued upon them unsuccessfully,—*Held* that he could not recover the purchase-money from his vendor's representatives, on the ground that the consideration for the payment had failed. MUHAMMAD MOHIDIN *v.* OTTAYIL UMMACHE . . . . . 1 Mad., 390

14. ——— Implied warranty—*Warranty of title by vendor or mortgagor—Right to*

sue for damages—A seller or mortgagor must always

although there may be no express agreement for title. DWARKA DASS *v.* RUTTUN SINGH . [2 Agra, 199

15. ———— *Description published in advertisement—Warranty of title—Mis-*

the patni, it having been found that the villages belonged to a third party as lakhirajdar, who obtained a decree against *A* in a suit to which *B* was made a party. *A* had published an advertisement setting forth a description of the property, and calling upon intending purchasers to come forward. *Held* that the advertisement published by *A* setting forth a description of the villages was substantially an implied warranty of title and would make him responsible to purchasers deceived by such misrepresentation, and fraud having been shown, the absence of a stipulation to refund would not protect *A* from refunding. *Held* that, in cases like this it would be a sufficient proof of fraud to show that the fact (of ownership) as represented was false, and that the person making the representation had a knowledge of the fact contrary to it. NILMONEE SINGH *v.* GORDON STUART & Co. 9 W. R., 371

See KHELUT CHUNDER GHOSE *v.* KRISTO GOBIND DEB . . 18 W. R., 276

16. ———— **Right to sue on warranty of title**—*Right to refund of consideration.*—A buyer may at once sue on a warranty of title if he can show that the seller has not a good title in accordance with his undertaking, and that he has sustained loss in consequence. *Semble*—It does not follow as a matter of course that on proof of breach of warranty the buyer is entitled to receive back the whole of the consideration money, or that on its being ascertained that the seller had no title the conditional sale is nullified. SAYEF ALI *v.* MAHOMED JOWAD ALI . . 7 W. R., 196

17. **Covenant against disturbance of possession**—*Loss of property by third person enforcing right of pre-emption—Disqualification of purchaser from buying—Covenant for good title to convey—Construction of covenant.*—An instrument of sale contained the following condition: "Should any person claim as a co-sharer or proprietor of the property, and assert his claim against the purchaser or raise any dispute of any kind, or if from any unforeseen cause the purchaser be deprived of the possession of the property or any portion thereof, or his possession thereof is disturbed in any way, then I (vendor), my heirs and assigns, shall be liable for the purchase-money, the profits of the property and costs of litigation." The purchaser, having lost the property by reason of a person having a right of pre-emption having sued him to enforce such right and obtained a decree, sued the vendor to recover the costs incurred by him in defending such suit, basing his claim upon the condition set forth above. *Held* that the suit was not maintainable, as such condition referred to flaws or defects in the vendor's title, and was not applicable to a loss accruing to the purchaser from his disqualification to buy. GOLAM JILANI *v.* IMDAD HUSAIN . I. L. R., 1 All., 357

18. ———— **Condition that purchaser shall take such title as vendor can give where vendor has no title at all**—*Auction-sale by mortgagee of mortgaged property—Condition of sale—Implied possession of some title in vendor.*—*R* having stolen from *N* the title-deeds relating to a certain property in Bombay in which he had no interest, but which belonged to *N*, deposited them with the plaintiffs, to whom he also executed an indenture of mortgage of the property comprised in the deeds to secure the repayment of a loan advanced to him by the plaintiffs. The plaintiffs subsequently sold the property at an auction-sale under the power of sale contained in the mortgage. The property was put up to auction under certain conditions of sale, of which the following was one: "The vendors shall not be bound to give any better title to the purchaser than they themselves possess, and the purchaser shall take the premises sold with such title only as the vendors can give him." Before the sale commenced a notice on behalf of *N* was read out to the persons then present, which stated that she claimed the property as absolute owner, and that *R* (who had mortgaged it to the vendors) had no interest in it. The defendant was not present when the notice was read. He did not arrive at the auction until after the bidding had begun, but on his arrival he was told of *N*'s claim. He was told nothing to make the above condition of sale misleading. He bid for the property and ultimately became the purchaser for R11,075. He immediately paid R275 by way of deposit, and signed an agreement to complete, which had the conditions of sale annexed to it. He subsequently ascertained that *R* had no interest in the property, and thereupon he called . . . make out a . . . plaintiffs, . . . of sal- re- . . . d he having failed to do so, they filed this suit against him, to recover the balance of the purchase-money. *Held* that the defendant was not liable to pay to the plaintiffs the balance of the purchase-money. The

that the vendors had some title, however defective it might be, and he had received at the auction no information which could be regarded as giving him notice to the contrary. MOTIRAM O. *v.* VINAYAK VEERCHAND . . I. L. R., 12 Bom., 1

4. CAVEAT EMPTOR.

19. ——— **Right of purchaser**—*Warranty of title—Hindu law—Contract—Sale of land in Bombay.*—In England the law gives to the purchaser of land a right to have a good title to it shown by the vendor. No such rule appears to exist in the Hindu law, and in contracts between Hindus for the purchase and sale of land in Bombay the intention of the parties must be ascertained from the terms of the agreement without regard to any implication. DEVSI GHELA *v.* JIVARAJ MUKUNDAS [2 Bom., 430: 2nd Ed., 406

20. ——— *Conditions of sale—Defect in title previous to title shown by vendor.*—When it is provided by conditions of sale of land that the vendor shall not be bound to show any title prior to an instrument of a certain date, the purchaser may insist upon a defect of title appearing *aliunde* and before that date, and if it be proved to exist may rescind the contract and recover back earnest-money, interest, and expenses. MANCHARJI PESTANJI *v.* NARAYAN LAKSHUMANJI . 1 Bom., 77

21. ——— **Land sold without warranty**—*Purchaser with invalid title—Liability of vendor.*—In the absence of fraud or express warranty of title in a sale of land, the vendee cannot recover from the vendor the expenses incurred in defending a suit for possession brought against him by a third party having a better title. NEELMONEE SINGH DEO *v.* GORDON STUART & CO. [1 Ind. Jur., N. S., 356: 6 W. R., 152

22. ——— **Liability of purchaser**—*Inquiry as to title—Eviction after purchase.*—By the rule of *caveat emptor,* the buyer is bound by law to take care of himself and to see that he buys after satisfying himself that there is a good title. The purchaser is bound to look not only to his own title, but to see that he is properly indemnified by the covenants in his deed of purchase; and if he does not choose to protect himself in this manner, he has no remedy: for if a deed of purchase has been once executed, unless there is an eviction by the vendor or some person claiming under him, the purchaser has no right of action against the vendor. GOUR KISHORE SHAHA *v.* CHUNDER KISHORE DUTT MOJOOMDAR . . . . . 25 W. R., 45

23. ——— **Sale of shares deposited with bank for advance**—*Depreciation of security—Objection to disclose position of shares.*—Where a contract has been made for the sale of shares deposited with a bank as security for an advance, the vendor is not bound to disclose the fact to the purchaser when there can be no reason to anticipate such a depreciation of value in the shares as would entitle the bank to refuse to transfer. NARAYAN SUCCARAM *v.* BHAWOO DAJEE . 1 Ind. Jur., N. S., 154

24. ——— **Fraudulent concealment by vendor of defect of title**—*Absence in sale-deed as covenant for title of purchaser—Right to damages.* In 1881 a Hindu executed a sale-deed of a house in the mofussil. The deed contained no covenant for title. The purchaser, having been ejected from a portion of the house under a decree, of which the vendor was aware at the time of the sale, sued the vendor for damages. The Munsif decreed the claim on the ground that the vendor had fraudulently concealed the existence of the decree. On appeal the District Judge reversed this decree, holding that, as the purchaser had not insisted on a covenant for title, he must be held to have accepted all risks. *Held* that, if there had been fraudulent concealment as alleged, the purchaser was entitled to damages. GAJAPATHI *v.* ALAGIA . . I. L. R., 9 Mad., 89

5. COMPLETION OF TRANSFER.

25. ——— **Oral transfer**—*Hindu vendor and purchaser.*—Land may pass by mere parol between Hindu vendor and purchaser. MOHESH CHUNDER CHATTERJEE *v.* ISSUR CHUNDER CHATTRJEE [1 Ind. Jur., N. S., 266

26. ——— **Want of registration**—*Sale complete without payment of purchase-money on registration of deed.*—A sale might be complete, and it still might be a condition of the contract that the purchase-money was to be paid afterwards, and the deed in evidence of the contract may not be completed. The bare fact of the deed not being registered would not annul a sale if, by mutual agreement, a sale had already been made. KALEE CHURN GIREE GOSSAIN *v.* LALLA MUDDUN KISHORE [7 W. R., 317

27. ——— *Transfer of Property Act (IV of 1882), s. 54 — Transfer of immoveable property by unregistered deed—Deed of which registration is optional—Suit by purchaser for possession when vendor is out of possession.*—S. 54 of the Transfer of Property Act is not exhaustive or imperative in requiring that the transfer of immoveable property of less than R100 should be made only by one of the modes there stated so as to confer a valid title. Where the plaintiff brought from the heirs of *M,* who were out of possession, their right, title, and interest in certain immoveable property, and such property was conveyed to the plaintiff by an unregistered deed, registration of the deed (the property being of value of less than R100) not being compulsory,—*Held,* in a suit to recover the property from persons in possession without title, that the sale conferred a valid title on the plaintiff, though not made by registered deed or by delivery of the property. The dictum of Garth, *C.J.,* in *Narain Chunder Chuckerbutty* v. *Dataram Roy, I. L. R., 8 Calc., 597, at p. 612,* dissented from. KHATU BIBI *v.* MADHORAM BARSICK . I. L. R., 16 Calc., 622

28. ——— *Transfer of Property Act (IV of 1882), s. 54, para. 3—Transfer of Property Act Amendment Act (III of 1885), s. 3—Immoveable property of value less than R100, Transfer of—Suit by purchaser for possession when vendor is out of possession.*—The transfer by sale of tangible immoveable property of a value less than one hundred rupees can be effected only by one of the two modes mentioned in s. 54, para. 3, of the Transfer of Property Act, *viz.,* by a registered instrument or by delivery of possession. *Khatu Bibi*

VENDOR AND PURCHASER—*continued.*

5. COMPLETION OF TRANSFER—*continued.*

v. *Madhoram Barsick, I. L. R., 16 Calc., 623,* overruled MAKHAN LALL PAL v. BUNKU BEHARI GHOSE . . . I. L. R., 19 Calc., 623

29. —— —— *Transfer of Property Act (IV of 1882), s. 54—Oral sale with possession Land worth more than R100.*—The plaintiff entered into an oral contract to sell certain land to the defendant for R2,500, and he put him into possession The defendant made default in payment of the purchase money The plaintiff, having professed to cancel the sale on the ground of this default, sued to recover possession of the land with mesne profits. *Held* that the sale was not complete under s. 54 of the Transfer of Property Act, and the plaintiff was entitled to the relief sought by him PATIREDDI v. NARASAREDDI

[I. L. R., 16 Mad., 464

30. —— Transfer of ownership of property—*Decree for specific performance of contract of sale—Conveyance.*—In the mofussil of the Bombay Presidency, the transfer of the ownership of immoveable property to a vendee who has obtained a decree ordering the specific performance of the contract of sale to himself does not wait for the execution of a conveyance,—even if the vendor is required, as he seldom is, to execute such a conveyance,—but is effected by the passing of the decree itself, coupled with the payment of the purchase-money. DHONDIBA KRISHNAJI PATEL v. RAMCHANDRA BHAGWAT

[I. L. R., 5 Bom., 554

31. —— *Possession given in execution of decree.*—The formal possession given by a Civil Court under an execution operates, in point of law and fact, as between the parties, as a complete transfer of possession from one party to the other LOKESSUR KOER v. PURGUN ROY

[I. L. R., 7 Calc., 418

32. —— —— *Execution and registration of conveyance—Failure to pay purchase-money and return of conveyance.*—*D* sold a house to *P* and executed a deed of conveyance which was duly registered. The purchase money, however, was never paid by *P*, who consequently never obtained possession. Shortly after the conveyance had been regis- [illegible]

and sued *D* for possession. The lower Courts threw out the claim, on the ground that the property had not passed to *P*, the sale to him being incomplete. *Held* the sale of the house by *D* to *P* was not incomplete. The deed purported to make an immediate transfer of the ownership of the house to *P*, and *P* accordingly became the owner of the house. The endorsement on the conveyance, not having been registered, could not affect the property. The plaintiff therefore, as purchaser of the right, title, and interest of *P*, became legal owner of the house, but subject to all *P*'s liabilities; and as *D* had a lien upon the house for the amount of the unpaid purchase money, the plaintiff could not obtain possession without paying off this charge. UMEDMAL MOTIRAM v. DAVU BIN DHONDIBA . I. L. R., 2 Bom., 547

33. —— *Execution of deed of sale—Failure of purchaser to perform preliminaries to possession.*—The vendor of certain immoveable property agreed to sell such property, and the purchaser agreed to purchase it on the understanding that the purchaser should retain a part of the purchase-money, and therewith discharge certain bond-debts due by the vendor, for the payment of which such property was hypothecated in the bonds On such understanding the vendor executed a conveyance of such property to the purchaser *Held*, in a suit by the purchaser for the [illegible]

34. —— —— *Part payment of purchase-money—Execution, registration, and delivery of sale-deed—Completion of sale—Right of purchaser to sue for possession—Transfer of Property Act (IV of 1882), s 54.*—Non-payment of the purchase money does not prevent the passing of the ownership of the property sold from the vendor to the purchaser, and the latter, notwithstanding such non-payment, can maintain a suit for possession of the property, subject to such equities restrictions, or conditions as the nature of the case may require *Mohun Singh v. Shib Koonwer, 1 Agra, 85 Goor Parshad v. Nunda Singh, 1 Agra, 160, Heera Singh v. Ragho Nath Sahai, 3 Agra, 33,* and *Umedmal Motiram v. Davu, I. L. R., 2 Bom., 547,* referred to. The difference between an executed contract of sale and an executory contract to sell observed on *Ikbal Begam v. Gobind Prasad I. L. R., 3 All., 77,* dissented from. A deed of sale of immoveable property having been duly executed and registered and delivered and the purchaser having paid a portion of the purchase-money to the vendor's creditors,—*Held*, with reference to s. 54 of the Transfer of Property Act (IV of 1882), that these facts amounted to a full transfer of ownership and the purchaser could maintain a suit for possession of the property notwithstanding that he had not paid the balance of the purchase-money to the vendor or to a mortgagee of the property, as stipulated in the deed. SHIB LAL v. BHAGWAN DAS

[I. L. R., 11 All., 244

35. —— *Sale of immoveable property—Transfer of Property Act (IV of 1882), s. 54—Delivery of possession—Registration of sale-deed.*—Registration of a sale-deed constitutes a sufficient delivery of the deed to pass the interest in land contained therein *Narain Chunder*

VENDOR AND PURCHASER—*continued.*

5. COMPLETION OF TRANSFER—*continued.*

Chuckerbutty v. *Dataram, I. L. R., 8 Calc., 597,* followed. PONNAYYA GOUNDAN v. MUTTU GOUNDAN [I. L. R., 17 Mad., 146

36. ——————— *Sale of immoveable property—Transfer of Property Act (IV of 1882), s. 54—Delivery of possession under deed of sale unregistered where registration is optional—Delivery of property—Share in a tank—Registration Act (III of 1887), ss. 17 and 18—Intention of parties—Question of fact—Second appeal.*—The defendants purchased a share in a tank in 1884, and the consideration being of a less amount than R100 and registration therefore optional, the deed of sale was unregistered. In 1886 the plaintiff purchased the same share from the same vendor under a registered deed of sale. It was found on the facts that the plaintiff purchased with notice of the defendants' previous purchase, and that the defendants had possession of the purchased share from the date of their purchase. *Held* (on appeal under the Letters Patent of the High Court) by TREVELYAN, J., upholding the decision of BEVERLEY, J. (HILL, J., dissenting), that the possession obtained by the defendants was a sufficient "delivery of the property" within the meaning of s. 54 of the Transfer of Property Act. *Makhan Lall Pal* v. *Bunku Behari Ghose, I. L. R., 19 Calc., 623,* referred to. *Per* TREVELYAN, J.—It is not necessary that there should be any formal making over of possession. *Per* HILL, J.—When the owner of immoveable property of a value less than R100 has executed to the intending buyer an instrument purporting to transfer the ownership of the property, and the instrument has not been registered, but the intending buyer has been placed in possession, the effect to be attributed to the delivery of possession depends on the intention of the parties, which is a question of fact that cannot be determined on second appeal. GUNGA NARAIN GOPE v. KALI CHURN GOALA [I. L. R., 22 Calc., 179

37. ——————— *Transfer of Property Act (IV of 1882), s. 54—Vendor and purchaser—Deed of sale—Completion of sale—Registration—Non-payment of consideration—Delivery of deed of sale.*—Mere registration of a deed of sale, unaccompanied by delivery of the deed to the vendee, does not make the transaction a completed one. Although under the Transfer of Property Act the sale of a tangible immoveable property of the value of one hundred rupees and upwards can be made only by a registered instrument, yet mere registration should not be taken as conclusive that the title has passed. If it was intended by the parties that the title should pass only upon the consideration money being paid, such intention should be given effect to. *Sheo Narain Singh* v. *Darbari Mahton, 2 C. W. N., 207,* approved. MAULADAN v. RUGHUNANDAN PERSHAD SINGH . . I. L. R., 27 Calc., 7

38. ——————— *Contract of sale—Delivery of possession—Payment of the whole of the purchase-money—Registered conveyance not executed—Transfer—Attachment—Vendor having no attachable interest—Transfer of Property Act (IV of 1882), ss. 40, 54, 55 (6) (b)—Trusts Act (II of 1882), s. 91.*—Under a contract of sale with respect to certain fields, possession was delivered to the vendee, and the whole of the purchase-money was paid to the vendor, but the transfer was not effected, as the necessary registered conveyance had not been executed. Subsequently a judgment-creditor of the vendor sought for a declaration that the fields were liable to be attached and sold as the property of the judgment-debtor. Before the case was decided by the Court of first instance, a registered conveyance had been executed. *Held* that the judgment-debtor was nothing more than a bare trustee and had no attachable interest in the property. *Hormasji Manekji Dadachanji* v. *Keshav Purshotam, I. L. R., 18 Bom., 13,* distinguished. KARALIA NANUBHAI MAHOMED OHAI v. MANSUKHRAM VAKHATCHAND I. L. R., 24 Bom., 400

39. ——————— *Transfer of Property Act (IV of 1882), s. 54—Sale of land—Non-payment of consideration—Delivery of deed—Completion of purchase.*—Under s. 54 of the Transfer of Property Act, though no title passes except upon registeration of the conveyance where such registration is compulsory, yet mere registration may not be sufficient to pass a good title; if the parties intend that no title shall pass upon registration till the consideration-money has been paid and the deed delivered, the law will give effect to such intention. Registration is *primâ facie* proof of intention to transfer the title, and the party who alleges the existence of a collateral agreement must strictly prove it. SHEO NARAIN SINGH v. DARBARI MAHTON . 2 C. W. N., 207

40. ——————— **Default in completing contract of sale**—*Partial performance*—In suits arising out of the default on both sides to complete a contract for the purchase and sale of land in the mofussil, the Court should proceed as a Court of equity, and should look to the acts and conduct of the parties subsequent to the making of the contract as well as the language of the contract itself; and where the contract has been partially performed and the purchaser put into possession of a portion of the land and allowed by the vendor so to continue long after the period fixed for completion of the contract has elapsed, further time should be given by the Court for the performance of the contract in specie. (TUCKER, J., *dissentiente.*) BALA VALAD SANKIA v. GABAJI BALVANT KULKARNI [2 Bom., 175: 2nd Ed., 168

41. ——————— **Conditional contract "subject to approval of title by purchaser's solicitors"**—*Rescission—Registration Act (III of 1887), s. 17, cl. (b).*—An agreement for the purchase and sale of certain immoveable property provided that the completion of the contract should be "subject to the approval of the purchaser's solicitors" (naming them), and that, if they should not approve of the title, the vendor should refund the earnest-money and pay all costs incurred by the purchaser in investigating the title. The purchaser's

VENDOR AND PURCHASER—*continued.*

5. COMPLETION OF TRANSFER—*concluded.*

solicitors disapproved of the title, and the purchaser rescinded the contract. The agreement was not registered. *Held* in a suit to recover the amount of the earnest money and costs that, assuming the objections to be reasonable, the purchaser was entitled to rescind the contract. *Held* further that the agreement did not require registration. SREEGOPAL MULLICK v. RAM CHURN NUSKUR

[I. L. R., 8 Calc., 856 : 12 C. L. R., 125

42. ——— Specific performance—*Approval of title by purchaser's solicitor—Contract.*—In a suit for specific performance of a contract for the sale of a house, the entire contract being contained in letters which provided that entry was to be given to the purchaser by a fixed date, and that the title-deeds were to be sent to the purchaser's solicitors, and "on approval of the same the purchase-money to be paid prompt,"—*Held* that the carrying out of the contract was in no way conditional upon the approval of the solicitors, but that their approval was a condition precedent to the prompt payment of the purchase-money without waiting for a conveyance, and that the title was to be investigated and approved in the ordinary way. This case distinguished from *Sreegopal Mullick v. Ram Churn Nuskur, I. L. R.*, 8 *Calc.*, 856. COHEN v. SUTHERLAND

[I. L. R., 17 Calc., 919

6. CONDITIONAL SALES

43. ——— Land sold on condition of re-purchase—*Absolute sale.*—Where land was sold on a condition of re-purchase, and no time was mentioned in the instrument of sale,—*Held* that the sale had not become absolute, and that the plaintiff, having bought the original vendor's rights, was entitled to maintain a suit for recovery of the land. GURUSAMY AIYAN v. SWAMINADHA AIYAN

[2 Mad., 450

44. ——— Deed of conditional sale—*Beng. Reg. XV of 1793—Beng. Reg. XVII of 1806—Usufruct.*—A deed of sale executed in 1201 (1794) was subject to the condition that if the vendors, "from the year 1202 to the year 1203, should repay the whole of the consideration-money, they should receive back the deed of sale, which shall then become null and void, and if within the said period they fail to pay the said consideration-money, this conditional sale shall become absolute and be considered irrevocable." *Held* that Regulation XV of 1793 did not operate to prevent the assignment becoming absolute after the expiration of the time limited for repayment of the consideration, and that Regulation XVII of 1806 had not a retrospective effect, and therefore did not apply; and that, even if the entire amount of the purchase-money were satisfied out of the proceeds of estate before the time for the conditional sale becoming absolute, the vendees would acquire a perfect title. BULDEO SINGH v. DHUKRUN SINGH . Marsh., 632

45. ——— Purchaser under conditional sale—*Incumbrances.*—A purchaser under a conditional sale takes the property with all *bonâ fide* incumbrances created by his vendor previous to the sale. RADHA MOHUN DEB v. NUND LAL DEY

[7 W. R., 363

46. ——— Mortgage by conditional sale—*Sale with subsequent agreement for re-purchase—Suit for pre-emption—Limitation.*—On the 6th of June 1887 one *R. K.* sold a certain zamindari share to *S*. On the 18th of May 1888 *B* brought a suit for pre-emption of that share. Pending the suit, on the 6th of July 1888 the vendor, the vendee, and the pre-emptor entered into an agreement, by which the vendee, recognizing the pre-emptive right of the plaintiff, agreed to re-transfer the property to the vendor or the pre-emptor on payment by either of them on the full moon of Jeth in any year of the price paid by him. On the 20th of June 1891, the vendor affecting to treat the transaction of the 6th of June 1887 as a mortgage, made an application purporting to be under s. 83 of the Transfer of Property Act accompanied by payment of the price of the property into Court, and prayed for redemption. The vendee refused to take out [illegible] considered null and void. On the 1st of September 1892 one *A. S.* filed a suit for pre-emption of the said property. *Held* that the original transaction of the 6th of June 1887 was an out and out sale, and was not and could not be, by the subsequent agreement between the parties, turned into a mortgage by conditional sale; and in consequence that the suit brought by *A. S.* was barred by limitation. RAM DIN v. RANG LAL SINGH

[I. L. R., 17 All., 451

7. CONSIDERATION

47. ——— Validity of contract of sale—*Agreement without consideration—Right to sell afterwards to another.*—A mere agreement to sell a certain property without any consideration passing, cannot bar the right of the vendor on the same day to sell a portion of the property to a third party, or invalidate the third party's purchase. HURYSUNDERY DABEE v. TARINEE CHURN CHUCKERBUTTY

[7 W. R., 38

48. ——— Non-payment of purchase money—*Intention to pass subject of sale—Failure to pay consideration, Effect of.*—Although ordinarily, in a transaction of sale it may be reasonable to suppose that the seller does not intend to pass the property to the purchaser until the purchase money has been paid or secured, it is not an absolute rule of law that the non-receipt of the consideration money in full entitles a vendor to make void a sale which is otherwise complete. MOHUN SINGH v. SHAH KOOWER . 1 Agra, 85

HEERA SINGH v. RAGHO NATH SUHAI. BUKTEH SINGH v. RAGHO NATH SUHAI . 3 Agra, 30

VENDOR AND PURCHASER—*continued.*

7. CONSIDERATION—*continued.*

49. ———— *Intention of parties—Failure to pay consideration, Effect of, after execution and delivery of deed.*—The intention of the parties from their acts should be ascertained; and when a deed is executed and delivered to the purchaser, a subsequent default by the purchaser in the due payment of the purchase-money would not, in the absence of fraud, make void the sale, or give any other right to the vendor than a right to sue for the money. Further, if it be proved that the vendor intended to retain possession until full payment, the Court may pass a decree establishing the purchaser's right subject to execution or payment of consideration. MOHUN SINGH *v.* SHIB KOONWER [1 Agra, 85

50. ———— **Plea of valuable consideration**—*Allegation of seisin of vendor and sale of absolute title.*—A pleading setting up as a defence a purchase for valuable consideration should aver the seisin of the vendor and the sale of his absolute title for good consideration. RADANATH DAS *v.* ELLIOT [6 B. L. R., P. C., 530

S. C. RADHANATH DOSS *v.* GISBORNE & CO. [15 W. R., P. C., 24: 14 Moore's I. A., 1

51. ———— **Failure of consideration**—*Bonus paid for talukh not in existence—Right to refund of bonus.*—When a bonus is paid for a patni talukh not in existence, there is an entire failure of consideration, and the person paying the bonus is entitled to a refund of it. The principle of *caveat emptor* does not apply to such a case. KRISTO LALL MOITRO *v.* NOBBO COOMAR ROY [5 W. R., 232

52. ———— **Proof of payment of consideration**—*Non-payment of consideration-money—Burden of proof.*—In a suit for possession of land to have been purchased under a registered deed of alleged sale, the defendant-vendor admitted the execution and registration of the deed, but denied receipt of consideration. The deed was dated in January 1876, and the suit was instituted in 1884. It was found that the vendor had been in possession during the whole of that period. The plaintiff produced no evidence in proof of the payment of consideration. *Held* that although, under ordinary circumstances, the party to a deed duly executed and registered who alleges non-payment of consideration is bound to prove his allegation, the fact that the plaintiff and his predecessor had silently submitted to the withholding of possession for upwards of eight years, combined with the continuous possession of the vendor, favoured the allegation of the latter that possession had been withheld because of the non-payment of consideration, and raised such a counter-presumption as to make it incumbent on the plaintiff to give evidence that consideration had in fact passed. *Held*, therefore, that in the absence of such evidence, and of evidence to explain the fact of the plaintiff being out of possession, the suit failed. ACHOBANAIL KUARI *v.* MAHABIR PRASAD [I. L. R., 8 All., 641

53. ———— **Part payment of consideration**—*Right to sue for possession.*—*Held* that non-payment of the consideration-money can be pleaded by the seller, and inquired into by the Court, the admission of the seller at the time of registration before the Registrar being no conclusive proof of payment of the consideration-money, with reference to the practice which obtains of preparing the sale-deed and registering it before payment. Under the ordinary rule of law, a purchaser has a right to sue for possession when a portion of the consideration-money has been paid, unless the contrary be shown to be the intention of the parties, and the seller has a right to sue for the balance of price. GOOR PERSHAD *v.* NUNDA SINGH . . . 1 Agra, 160

54. ———— **Right to refund of earnest-money**—*Agreement for sale of ship—Failure of consideration.*—Plaintiff and defendants entered into an agreement for the sale by the defendants, who were thereby stated to be the absolute owners of a certain ship, to the plaintiff of the said ship. The defendants agreed with the plaintiff that they would, immediately upon payment of the purchase-money, execute to the plaintiff and another a proper bill of sale of the ship. The defendants were unable to get a properly registered bill of sale of the ship made out owing to infirmity of their own title, but were willing, so far as they could, to convey. The plaintiff had made part payment in respect of the price of the ship. *Held* that the consideration had failed, and that the plaintiff was entitled to a refund of the money paid by him in part payment, and of sums disbursed by him under the agreement on account of the expenses of the ship. JASSIM BINSAFF *v.* ESAU AHMED . . . . 2 Ind. Jur., N. S., 13

55. ———— **Valuable consideration, Question of**—*Assignment of chose in action.*—The question whether an assignment of any equity of redemption admitted by the assignor was made for a valuable consideration or not, is no material in determining the rights of the assignee against a party who holds adversely to the assignor. KACHU BAYAJI *v.* KACHOBA VITHOBA . . . 10 Bom., 491

56. ———— **Sale of sír land with covenant to relinquish ex-proprietary rights**—*Non-performance of illegal contract—Suit to recover consideration-money.*—A deed of sale which purports to convey to vendees the ex-proprietary rights of the vendors in sír lands is an illegal contract and void as being in violation of ss. 7 and 9 of Act XII of 1881. Where, therefore, along with some zamindari land, certain sír lands were sold, and the vendors purported by their sale-deed to relinquish their ex-proprietary rights in the sír lands, but failed to put the vendees into possession of either the zamindari or the sír lands, it was held that the vendees could not recover from the vendors, as compensation, the consideration-money which they had paid in respect of the sír lands. BHIKHAM SINGH *v.* HAR PRASAD . . . . I. L. R., 19 All., 35

57. ———— If a zamindar sells his zamindari rights and includes in the sale the

VENDOR AND PURCHASER—*continued*

7. CONSIDERATION—*concluded*.

right to cultivatory possession of the sir land, and agrees to relinquish his ex proprietary rights in respect of the sir land, the vendee, in the event of such possession not being delivered or ex proprietary rights not being relinquished, is not entitled to claim a refund of the sale price or any portion thereof *Bhikham Singh* v. *Har Parsad*, *I. L. R.*, *10 All.*, 35, approved MURLIDHAR v. PEM RAJ

[I. L. R., 22 All., 205

58. ———— Deed of sale set aside for want of consideration—*Contract Act (IX of 1872)*, *s. 25*.—On the 16th November 1892 *A* executed to *B* a deed of sale of certain land The deed was duly registered, and it recited that the consideration money, R 0, had been duly paid *B* got into possession of the land *A* subsequently brought a suit to set aside the deed of sale, and to recover

. . .

money had not been paid. The lower Appellate Court dismissed the suit, holding that *A*'s remedy was to sue for the consideration money if it was unpaid, and that he had a lien on the land for the amount, but that he could not set aside the deed. *Held* that the deed should be set aside, and the plaintiff should recover possession *Per* FULTON, *J.*—The sale was void for want of consideration S. 25 of the Contract Act applied to the transaction *Trimalrao Raghavendra* v. *Municipal Commissioner of Hubli*, *I. L. R.*, *3 Bom.*, *172*, distinguished. *Per* FARRAN, *C. J.*—The facts serve to show that there was no sale at all, and that the plaintiff was tricked into executing and registering the conveyance. Conveyances of lands in the mofussil perfected by possession or registration, where the consideration expressed in the conveyance to have been paid has not in fact been paid, should not, however, be put in the same category as contracts void for want of consideration TATIYA v. BABAJI . . . I. L. R., 22 Bom., 176

59. — Want of consideration for deed of sale—*Evidence that a deed is not intended to have the ordinary operation*.—The plaintiffs sued for certain land which they claimed in succession to *R*, deceased The defendant who was in possession had executed a sale deed comprising the property now in question in favour of the deceased. But it was pleaded by him and found by the Court of first appeal that the sale deed was benami, and no consideration had passed, and a decree was passed dismissing the suit *Held* on second appeal that the decree should be reversed. *Per curiam*.—When a conveyance has been duly executed and registered by a competent person it requires strong and clear evidence to justify a Court in holding that the parties did not intend that any legal effect should be given to it. It needs to be proved that both parties had it in their minds that the deed should be a mere sham, and in order to establish this proof it needs to be shown for what purpose other than the ostensible one the deed was executed RANGA AYYAR v. SRINIVASA AYYANGAR . . . . . I. L. R., 21 Mad., 56

VENDOR AND PURCHASER—*continued*.

8. FRAUD.

60. ———— Evidence of fraud—*Inadequacy of purchase money*.—In considering a case of alleged fraud in the purchase of an estate, it is material to inquire what relation the purchase-money paid bore to the value of the estate SREEMUTCHUNDER DEY v. GOPAL CHUNDER CHUCKERBUTTY

[7 W. R., P. C., 10: 11 Moore's I. A., 28

61. *Notice of facts implying bad title*—*Malâ fides*—*Questions of bonâ fides*.—Notice of fact from which the infirmity of the vendor's title might be inferred is evidence of *malâ fides*, but is not itself *malâ fides*, and the question of *bonâ fide* purchase is one of fact SITHA UMMAL v. RUNGASAMI IYENGAR 5 Mad., 385

62. — Effect of fraud—*Goods obtained by fraud*—*Right of vendor*.—Where goods have been obtained by means of a fraudulent purchase, the vendor has a right to disaffirm the contract so as to revest the property in himself, and this even if the property had passed to the vendee with the consent of the vendor Where a vendee purchased cotton, with the preconceived design of not paying for it, the sale did not pass the property although the cotton may have been with the vendor's consent, allowed to be placed on the vendee's boat, still the vendee must be considered as the agent of the vendor, and his possession as that of the vendor and the cotton as still the property of the vendor as long as the price was not paid. DURSUN LALL PANDEY v. INDUR CHUNDER . . . 6 W. R., 81

63. *Contract Act*, *ss. 17, 19*—*Contract induced by fraud*—*Right to rescind*.—If a vendor has been guilty of fraud within the meaning of s. 17 of the Indian Contract Act by actively concealing a fact which it was material for the purchaser to know, and the purchaser was induced thereby to purchase, the fact that the purchaser by exercise of ordinary diligence might have ascertained the truth affords no answer to a suit to recover the purchase money Such a case does not fall within the exception to s. 19 of the Contract Act. MORGAN v. GOVERNMENT OF HAIDARABAD

[I. L. R., 11 Mad., 419

64. ———————— *Fraudulent misrepresentation*—*Sale of immoveable property*—*Misdescription of area sold*—*Suit for damages*—*Nature of proof required*. A purchaser of certain immoveable property sued his vendors to recover compensation or damages on account of a deficiency in the actual area of land purchased by him as compared with the area stated in his sale-deed. There was no covenant in the sale-deed to make compensation in case of misdescription. *Held* that the plaintiff, in order to succeed, must make out a fraudulent misrepresentation which he accepted as true, and which induced him to enter into the contract, and which caused him damage. *Derry* v. *Peek*, *L. R.*, *14 Ap. Cas.*, 337, referred to. ABDULLAH KHAN v. ABDUL RAHMAN BEG I. L. R., 18 All., 322

VENDOR AND PURCHASER—*continued.*

9. INVALID SALES.

65. ——— **Fraudulent concealment**—*Knowledge of defect in title, or of incumbrance.*—Where a vendor, knowing that he had no right or title to property, or being cognizant of the existence of incumbrances, or of latent defects materially lowering it in value, sold it and neglected to disclose such defects to the purchaser,—*Held* that there was a fraudulent concealment vitiating the contract. PEAREE MOHUN SOOR *v.* ABDOOL SOBHAN CHOWDHRY . . . . . **7 W. R., 258**

66. ——— **Misrepresentation**—*Right to recover purchase-money.*—Wilful misrepresentation by a vendor regarding property sold, practised in a matter within his knowledge, and concerning which the purchaser had no adequate means of knowledge, held to vitiate a sale, and to entitle the purchaser to recover the purchase money actually paid by him. MAHOMED SHARE KHAN *v.* BAHOO BEGUM **[1 N. W., Part II, p. 26 : Ed. 1873, 84**

67. ——— *False representation alleged against vendor by purchaser—Inducement not proved—Shareholder buying shares from a Director of the Company.*—To maintain a suit for damages upon a false representation alleged by purchaser against vendor, it must be established that the plaintiff was induced by the misrepresentation to enter into the contract. Shares in a banking company which shortly afterwards went into liquidation were sold by a Director to the plaintiff, a shareholder. The latter now sued the vendor, alleging inducement to buy the shares by the vendor's false representations as to the state of the Bank's affairs. Both the Courts below concurred in finding that oral representations as to the latter alleged to have been made by the defendant to the plaintiff were not proved. Those Courts, however, had concurred in finding that the defendant, though he was not responsible for false balance-sheets issued before 1890, was well aware of the falseness of the one issued for the half-year ending on the 30th June 1890. The Judicial Committee saw no reason for interfering with these concurrent findings. The plaintiff, in this appeal, relied on the issue of the false balance-sheet of 1890, the issue of a false report by the Directors, and a wrongful payment of dividend for the period above mentioned, acts in which the defendant had taken part; these acts, as a series, constituting false representations, the bank having in fact been insolvent at the time. But it was not shown by the evidence that the plaintiff had been induced to buy the shares, which he had contracted to buy in two sets, one in September, the other later on in 1890, by any of the representations so made; regard being had to the dates respectively and to his own knowledge. The dismissal of the suit was therefore maintained. MACAULIFFE *v.* WILSON **[I. L. R., 21 All., 209 L. R., 26 I. A., 6**

68. ——— **Undue influence**—*Fiduciary relationship—Attorney and client—Onus probandi.*—A contract of sale or conveyance entered into by any one with a person who stands relatively to him in a position of confidence or trust is liable to be called in question by the vendor, and to be set aside at his instance, if it be found that the other party made an unfair use of his advantages. This rule of equity applies strongly in a case where any person acting as an attorney, or as a legal adviser, enters into a contract with his client in respect of the subject of litigation or advice. Undue influence is presumed to have been exerted until the contrary is proved, and the purchaser is bound to show that all the terms and conditions of the contract are fair, adequate, and reasonable. PUSHONG *v.* MUNIA HALWANI . **1 B. L. R., A. C., 95 : 10 W. R., 128**

69. ——— *Fiduciary relationship—Trustee and cestui que trust.*—*J* and *M* were named executors of the will of *H*, who died in 1844. *M* alone proved the will, but *J* did not renounce probate until nine years after the death of *H* and the commencement of litigation. The only act as an executor of *H* proved against *J* was, that, in a deed executed by him for the conveyance of the share of *H* in a certain estate in which *J* was also interested in another capacity, he was described as executor of *H*, and the deed recited that probate had been granted to him. *Held* that he was by this reason, as well as on the ground of having an unfair advantage in respect of certain property in litigation, precluded from purchasing the interest of *H*'s sons under a decree. DHONENDRO CHUNDER MOOKERJEE *v.* MUTTY LOLL MOOKERJEE. SREEMANCHUNDER MOOKERJEE *v.* MUTTYLOLL MOOKERJEE . **Cor., 57**

70. ——— **Purchase by agent or other person on fiduciary position**—*Fiduciary relationship—Onus probandi—Consideration.*—An agent or person in a fiduciary position towards the owner of property purchased by him is bound to prove that the sale was made for good and sufficient consideration, and must not only prove that the agent had authority to sell, and that the consideration alleged was in fact paid, but also that the consideration paid was a fair price for the property. If the purchase be made by a stranger, such a purchaser need not show that the consideration paid by him is a consideration equal to the value of the property; it will be sufficient for the purchaser to show that the sale was made by a person who had authority from the owner to sell; and, unless the seller can establish a fraudulent connivance between the agent employed to sell and the purchaser, the sale will be binding on the seller on proof of authority of the agent to sell. RUTTA BEBEE *v.* DUMREE LAL . **2 N. W., 153**

71. ——— **Deed of sale executed by man of weak intellect**—*Ground for setting aside sale by Court of equity.*—A Court of equity will not set aside the voluntary deed of a weak man who is not absolutely *non compos*, unless the weakness as well as the facts surrounding the transaction and the nature of the transaction itself be such as to satisfy the Court that the person had not at the time a mind adequate to the business, and that he might have been imposed upon, or unless the Court is not satisfied of the good faith of all the parties to

VENDOR AND PURCHASER—*continued*

9. INVALID SALES—*continued*.

the transaction RAJENDER CHUNDER NEWOGE *v.* BHOOBUN KALEE DEBEA . W. R., 1864, 65

72 ———— Sale by old and illiterate woman without professional advice—*Fraud—Undue influence—Inadequate consideration—Terms on which deed will be set aside—Purchase money declared a charge—Funeral expenses of Hindu widow declared a charge—No allowance for repairs and improvements.*—*C* was the widow of one *R*, deceased and from the death of *R* until her own death remained in occupation of a house and chawl which had belonged to him *D* was a sister of *C*'s and shortly after *R*'s death, *D* and her son *B*, the h *C* on ler only ving with s, on joint account, various sums of money, amounting to R3,5 0 for purposes such as would have justified *C* in pledging the property of her late husband to secure the repayment of the same. *C* became very ill, and *D* and *B* fearing she might be going to die requested her to take some steps to secure to them the repayment of the sums they had advanced to her *C* thereupon offered to give *D* and *B* an absolute deed of sale of the said house and chawl in consideration of the said sum of R3 500 already advanced to her and of an additional sum of R500 then to be paid to her to defray her funeral expenses and the costs of the said conveyance. *D* and *B* consented, and called in their solicitor to take *C*'s instructions and draw up the deed in question, which he accordingly did, and within three days of the said agreement the deed was executed. At that time *C* was very ill and twelve days after the execution of the deed *C* died. *C* was an illiterate woman over sixty years of age, and had in this matter no independent professional or other advice The additional sum of R500 agreed to be paid to *C* was never so paid to her but after her death *D* and her son expended moneys in and about her funeral ceremonies amounting as they alleged to upwards of R400 The property in question so pledged to them for R4 000 was worth at least R6 ,00 The plaintiff one of the heirs of *R* sued to set the deed aside and for possession of the said property *Held* that the deed of sale must be set aside as obtained under circumstances which amounted to fraud *Held* also that the advances, amounting to R3 500, made to *C* by *D* and her son *B*, being made for purposes for which *C* would have been justified in pledging the said property, the deed of sale should be set aside only on the terms that the property in question should stand charged with the repayment of the sums so advanced *Held* also that the property must stand charged with the repayment to *D* and *B* of such a sum as, having regard to her position and station in life, should be found to be a reasonable sum for the funeral expenses of *C* After *C*'s death, *D* and *B* remained in possession of the said property under the deed of sale and expended considerable sums of money in and about repairs and improvements to the same, and they now claimed that, if the sale was to be set aside, the sums so expended should be repaid to them. *Held* that no allowance could be made to *D* and *B* for sums so expended by them such sums having been expended at a time when *D* and *B* must be taken to have known that they were fraudulently in possession of the property in question. SADASHIV BHASKAR JOSHI *v.* DHAKUBAI

[I. L. R., 5 Bom., 450

73 ———— Inadequacy of consideration—*Actual or constructive fraud—Cancelment of sale—Sales by expectant heirs of reversionary interests*—In the case of a sale by a person, young indeed and in distressed circumstances but not without advice or means of information of an estate actually vested in him, but not to be obtained without litigation, the party seeking to set aside the sale must establish the fraud actual or constructive which entitles him to relief It is not sufficient for him to show that he did not receive the full value of the estate to which the result of the litigation might ultimately show him to be entitled The difference between that value and the purchase money if not too disproportionate may be legitimately taken to represent the difference between certainty and immediate enjoyment on the one hand, and risk worry expense, and delay on the other The exceptional equitable principles which in a sale by an expectant heir of a reversionary interest, throw upon the purchaser the onus of showing that he gave a fair price, and which, on failure of such proof entitles the expectant heir to have the sale set aside have no application in the above case or in that of every ignorant and improvident person VIMUDIN BHAV *v.* ZIA UL-NISSA I. L. R., 6 Bom., 309

74 ———— Omission to register *Fraud—Registration Act, XVI of 1864, s 18*—Where the sale deed was executed, and consideration paid, but the deed was not registered within four months owing to the seller's fraud *Held* that such fraudulent vendor could not benefit himself by pleading the provision of law in 18 Act XVI (1864) as a bar to the purchaser's claim. PURTAB RAI *v.* JODHUN SINGH . . 2 Agra, Pt. II, 201

75 ———— Alienation to defeat execution of decree—*Rights of creditor with at specific lien against purchaser Fraud.* On the 3rd October 1870 the plaintiff filed a suit against *D* to recover certain lands and money While the suit was pending—viz on the 13th October 1870 *D* mortgaged part of his immoveable property to defendant *R*, and on 21st August 1871 executed a deed of sale to defendant *R* of all the immoveable property of which he (*D*) was then possessed, for the price of R4000. On 30th April 1872 the plaintiff obtained a decree against *D*, and in execution thereof attached certain immoveable property other than the land mentioned in the decree The defendant *R* applied under s. 246 of the Civil Procedure Code (Act VIII of 1859), and on the 21st August 1873 procured the removal of the attachment, whereupon the plaintiff brought the present suit to set aside the order of 21st August 1873 and to obtain a declaration that the

VENDOR AND PURCHASER—*continued.*

9. INVALID SALES—*continued.*

attached property belonged to *D* and was liable in execution. *Held* that, inasmuch as neither the decree of the 30th April 1872, nor the plaint on which it was founded, established or sought to establish any claim against a specific lien upon the immoveable property, the subject of the present suit, it was perfectly competent for *D*, at any time previously to an attachment of the property, to alienate it, and the question for decision as to that property was whether *D* had alienated it or not. If the deed of sale by which *D* conveyed the property on the 21st August 1871 were merely colourable, and the change of ownership ostensible only and not real,—*i.e.*, if it was the intention of the parties that the alienee should be merely a trustee for *D* to shield the property from execution, and that *D* should continue to be the beneficial owner of it,—there would not be any alienation, and the deed of sale would be void as against an attaching creditor of *D*. If, on the other hand, the sale were a real transaction,—*i.e.*, if it was the intention of the parties that the full ownership should pass from the vendor to the vendee,—then the sale would be valid, even though it might have been in the contemplation of the parties that future attempts to attach the property by a creditor of the vendor (not having any specific lien on the property) should be defeated by the sale. Until attachment the creditor has no right to interfere with the power of his debtor to deal with his property. RAJAN HARJI *v.* ARDESHIR HORMUSJI . . . . I. L. R., 4 Bom., 70

SAKHARAM MAHIPAT *v.* DAWUD VALAD JAWABHAI . . . I. L. R., 4 Bom., 76 note

BALVANTRAV *v.* JIVANJI HORMASJI [I. L. R., 4 Bom., 77

76. ——— Sale to two successive purchasers—*Non-payment of purchase-money—Right of first and second purchasers.*—The proprietor of certain immoveable property conveyed it first to one person and then to another. The first purchaser sued the vendor and the second purchaser for the possession of the property, alleging that he had been put in possession of it, but had been ousted by the second purchaser. *Held* that the first sale was not void by reason of the non-payment of the purchase-money, and that the second sale being invalid as having been made by a person who had no rights and interests remaining in the property, the second purchaser was not a representative of the vendor and entitled to receive the purchase-money found to be still due to him from the first purchaser, and to retain possession of the property until the receipt of that purchase-money. RAM LAKHAN RAI *v.* BANDAN RAI . . . . . I. L. R., 2 All., 711

77. ——— Sale of property not belonging to vendor—*Loss sustained by purchaser on being dispossessed.*—Where a party sells property to others, and it afterwards appears that he had not the right to do so, and the purchasers are in consequence dispossessed, the loss ought to fall on the vendor, and not on the vendees who put faith in his act of selling. AMANOOLLAH *v.* MAHOMED NASIR [22 W. R., 442

VENDOR AND PURCHASER—*continued.*

9. INVALID SALES—*concluded.*

78. ——— Deed of sale set aside as being fraudulent and void—*Right of purchaser to compensation for improvements.*—A party in possession under a deed of sale conveying real estate, the property of a defendant in a pending suit, held not entitled to any allowance for sums expended by him for improvement upon the estate, when the deed was found to be fraudulent and void as against the creditors of the vendor, and to have been executed to defeat a sequestration. MUSADEE MAHOMED CAZUM SHERAZEE *v.* ALLY MAHOMED SHOOSTRY . . . 6 Moore's I. A., 27

79. ——— Purchaser with notice of prior contract to sell—*Trust Act (II of 1882), s. 91—Specific Relief Act (I of 1877), s. 27.*—In a suit for land it appeared that the plaintiff had obtained a registered sale-deed, comprising the property in question, from defendants Nos. 1 and 2 who had already (to the plaintiff's knowledge) contracted to sell it to another, and that the plaintiff had paid no consideration for the sale-deed, which in fact represented a collusive transaction entered into to defeat the prior contract. *Held* that the plaintiff was not entitled to recover. NAMASIVAYAM PILLAI *v.* NELLAYAPPA PILLAI . I. L. R., 18 Mad., 43

80. ——— Execution of sale-deed without consideration—*Subsequent transfer for value—Transfer of Property Act (IV of 1882), s. 54.*—In a suit for land, it appeared that in 1887 *A* had executed in favour of *B* a registered conveyance of the land in question, which purported to be a sale-deed, but that no consideration was in fact paid; and that *A*, who had retained possession, sold and delivered the land to *C* and *D*, and that they then discharged a mortgage which was to have been paid off by *B*. In the interval between the two transactions above referred to, the plaintiff had purchased the land from *B*, and he now alleged that the persons in possession had executed a rent agreement, in fact found to be a forgery, under the terms of which he claimed to eject them. *Held* that the plaintiff's claim, founded on the transaction of 1887, did not prevail against *C* and *D*. SANGU AYYAR *v.* CUMARASAMI MUDALIAR . . I. L. R., 18 Mad., 61

81. ——— Colourable sale—*Sale of property to defraud creditors—Indicia of fraud.*—Where in a suit to establish plaintiff's right to property purchased by him it was found that his vendor, who had many debts to pay, had sold to the plaintiff all his property, reserving nothing to himself; that the plaintiff bought the property without seeing it or valuing it; that the consideration for the sale consisted of time-barred debts or debts which were not payable at the time; that the property sold remained in the possession of the vendor, who paid its assessment; and that the consideration was grossly inadequate,—*Held* that there was no *bonâ fide* or valid sale, but a mere colourable transaction without consideration not intended to transfer the property to the plaintiff. NANA MANSARAM SHET *v.* RAUTMAL TARACHAND SHET . . . . I. L. R., 22 Bom., 255

VENDOR AND PURCHASER—*continued.*

10 LIEN.

82. ——— **Creation of lien**—*Title—Notice of charge—English law as to right of bona fide purchaser for value without notice.*—By contract and deposit of title-deeds *B* charged certain land in favour of *A* as a security in respect of the non-delivery of the title-deeds of an estate bought by *A* from him. After the creation of this charge, the land was transferred by *B* to *C*. The Sudder Court having decided that the contract was not operative as an hypothecation or pledge, even between the parties to [illegible]

law was shown to forbid the giving effect to such agreement. The owner of property subject to a lien or charge can in general convey to another no title higher or more free than his own; it lies always on a succeeding owner to make out a case to defend such prior charge. The law in India does not enable a purchaser of land to look only to the apparent title in the Collector's books, or the presumed title of the owner in possession; and it is beyond the province of a Court of justice to give effect to the title of such a purchaser to the extent of defeating a prior lien or charge. Conceding that a purchaser for value *bona fide*, and without notice of the charge, would have an equity superior to *A's* right,—*Held* that a purchase in good faith by *C* had not been proved. If the [illegible]

[Marsh., 461: 9 Moore's I. A., 303

of [illegible]
18 [illegible]
unstored produce of land in the occupation of a cultivator, with notice of the lien created on such produce by s. 56 of Act XVIII of 1873, takes such produce subject to such lien. S. A. No. 1393 of 1870 decided on the 4th February 1871, and *Achal v. Gunga Pershad, 2 Agra, 73,* followed. KINLOCK COLLECTOR OF ETAWAH. KINLOCK v. COURT OF WARDS . . . . I. L. R., 3 All., 433

84. ——— *Lien by deposit of title-deeds—Subsequent purchase by another.*—In 1865 *C* gave *H* a lien on his property by a deposit of title-deeds. In 1867 *B* purchased the same property *bona fide* and without notice of *H's* lien. *Held* that *B* took the property free of the lien. BUNSEE DHUR v. HEERA LALL

[1 N. W., Part VI, 74: Ed. 1873, 166

85. ——— *Priority—In-* [illegible]

money of the contract and in part payment of the purchase-money. The claimant was not satisfied at that time with the title-deeds supplied by the vendor, but afterwards entered into fresh negotiations for

VENDOR AND PURCHASER—*continued*

10 LIEN—*concluded.*

the purchase upon different terms. The vendor died, [illegible]

either of the original contract or the subsequent negotiations. KENNY v. ADMINISTRATOR-GENERAL OF BENGAL . . 3 B. L. R., O. C., 75

86. ——— ——— *Lien, Concealment of—Estoppel.*—In execution of a money decree, the decree-holder caused the right, title, and interest of the judgment-debtor in a certain property which had been mortgaged to him by a registered bond to be sold, but without notice of the existence of such lien. He afterwards obtained a decree upon the bond, and sold it to the defendants, who caused the same property to be attached. The purchaser intervened under s. 246, but without success. In a suit by the purchaser to establish his absolute right,—*Held* that, as the defendants' vendor has suppressed the fact of the charge, and thereby induced the plaintiff to purchase as the absolute property of the judgment-debtor, they were now precluded from setting up his lien. DULLAR SIRKAR v. KRISHNA KUMAR BAKSHI 3 B. L. R., A. C., 407: 12 W. R., 303

87. ——— **Right to enforce lien**—*Sale subject to decree declaring lien on property.* If a decree declares a lien over *A's* property for a certain sum in favour of *B*, and subsequently *A* sells part of this property to *B* and part to *C*, *B* cannot sue to enforce his lien against *C's* purchase without bringing his own into contribution. RAM LOCHUN SIRCAR v. RAM NARAIN . I C. L. R., 290

88. ——— **Lien on land created by agreement**—*Sale to stranger without notice—Purchaser, Right of.*—*D* mortgaged certain land to *S* to secure repayment of a loan, and covenanted that in a [illegible]

the covenant. COOLING v. SARAVANA

[I. L. R., 13 Mad., 69

11. NOTICE.

89. ——— **Necessity of notice of title**—*Equitable doctrine of secret ownership.*—It is a rule of universal equity, and not one peculiar to English Courts, that, in order to enable the real owner of property to recover from a purchaser for value from a person allowed by the real owner to hold himself out as the owner, he must prove either direct or constructive notice of the real title, or that there existed circumstances which ought to have put the purchaser on an inquiry which, if prosecuted, would have led to a discovery of the real title. RAMCOOMAR KOONDOO v. MCQUEEN

[11 B. L. R., 46: 18 W. R., 166
L. R., I. A., Sup. Vol., 40

90. ———— Purchaser without notice—*Secret ownership—Fraud.*—A vendee who purchases for valuable consideration, and without notice of benami, from the ostensible owner of the property held by him under an apparently good title will be protected from subsequent acts of the owner or his heir, both of whom were parties to the fraud; and his purchase will hold good against any subsequent sale made by them. RENNIE *v.* GUNGANARAIN CHOWDHRY . . . . . 3 W. R., 10

91. ———— *Equitable relief against forfeiture.*—Remarks on the doctrine of equity as to the applicability of the defence of purchase for valuable consideration without notice. The defence does not apply where the Court of Chancery is *exercising a jurisdiction* concurrent with that of the Courts of the law. Where *A* sold land to *B*, reserving a right to re-purchase by payment of a certain sum at a specified time, and before such time had arrived *B* re-sold to *C* for valuable consideration without notice, and *A* failed to make the payment and forfeited his right to re-purchase,—*Held* that he had no title unless relieved against the forfeiture, and that such relief could not be given as against *C*. SAMAKKAUNDAN *v.* PERUMAL CHETTI [2 Mad., 14

92. ———— *Assignment of equitable estate—Notice to holder of legal estate—Hindu law.*—In order to complete assignment of an equitable estate in immoveable property, it is not necessary by English law that notice of the assignment should be given to the owner of the legal estate. Nor is there any rule of Hindu law which requires notice to be given to the person in possession whose position may be considered analogous to the holder of the legal estate in English law. GOVINDRAV *v.* RAVJI . . . . I. L. R., 12 Bom., 33

93. ———— *Purchase from joint Hindu family—Presumption.—Semble*—That considering the state of Hindu families, a purchaser would be affected with notice by much slighter evidence than a purchaser in other countries. KOYILOTHPUTENPURAYIL MANOKI KORAN NAYAR *v.* PUTHEN PURAYIL MANOKI CHANDA NAYAR [3 Mad., 294

94. ———— *Bonâ fide purchaser—Fraud in vendors.*—A *bonâ fide* purchaser should not be deprived of the benefit of an honest purchase, even though the sale to his vendors was fraudulent if he had no notice of the fraud. GOLAM AHEA *v.* DIGUMBUR SINGH . W. R., 1864, 225

95. ———— *Sale of whole interest—Subsequent purchase without notice by another.*—The plaintiff purchased from the first defendant who purchased from the person admitted to be the owner in 1856. The resisting defendants claimed under a subsequent sale by the same person. *Held*, reversing the decree of the lower Court, that on the simple principle that after the conveyance to the first defendant the owner of the land had nothing more to convey, the resisting defendants took nothing, and the plaintiff was entitled to recover. VIRABHADRA PILLAI *v.* HARI RAMA PILLAI [3 Mad., 38

See contra, CHIDAMBARA NAYINAN *v.* ANNAPPA NAYAKKAN . . . . . 1 Mad., 62

96. ———— *Bonâ fide purchaser—Omission to make proper inquiries into title.*—In order that a purchaser of immoveable property from a Hindu in the Island of Bombay may be entitled, as against the beneficial owner of such property, to set up the defence of being a *bonâ fide* purchaser without notice, he must show that he has made all proper inquiries into the title and as to the state of the family of his vendor, and of his vendor's predecessors in title for a period of twelve years at least before the date of his purchase. SAVAKLAL KARSANDAS *v.* ORA NIZMUDDIN 8 Bom., O. C., 77

97. ———— *Notice of possession of rent—Notice of tenancy—Purchaser how far affected with notice of lessor's title.*—Notice of possession of the rents of property is notice of the tenancy, but does not of itself affect a purchaser with notice of the lessor's title. *Barnhat v. Greenshields, 9 Moore's P. C., 18*, referred to. GUNAMONI NATH *v.* BUSSUNT KUMARI DASI [I. L. R., 16 Calc., 414

98. ———— Purchaser, Obligation of—*Joint Hindu family, Purchase from.*—When a person has notice that another has or claims an interest in property for which he is dealing, he is bound to inquire what that interest is; and if he purchases without doing so, he will be bound, although the notice was inaccurate as to the particulars or extent of such interest where the notice is given by the person himself who claims an interest in the property, and it is afterwards proved that he had such an interest,—*Quære*—Whether any amount of inquiry can discharge the purchaser from liability. A purchaser, therefore, from one member of a joint Hindu family is affected with notice of the claims of the other members. On the facts,—*Held* (reversing the decision of the Court below) that no sufficient inquiry had been made in this case. GOBIND CHUNDER MOOKERJEE *v.* DOORGAPERSAD BABOO [14 B. L. R., 337 : 22 W. R., 248

99. ———— Incumbrance—*Fraud—Equitable mortgage—Purchaser for valuable consideration without notice.*—The reason for the rule of equity that a purchaser of property, though for valuable consideration, yet with notice of a prior incumbrancer, purchases subject to such incumbrance, is that such purchaser is acting *malâ fide* in taking away the right of the prior incumbrancer by getting the legal estate, while knowing that a prior purchaser has the right to it. But a purchaser for valuable consideration, without notice of the prior right of a third person, is not guilty of or party to a fraud upon the rights of a prior purchaser. The Courts of equity therefore will not interfere with his right to the possession, enjoyment, and disposal of the property; and though subsequently to his purchase he may become aware of the prior incumbrance, yet he has the right

VENDOR AND PURCHASER—*continued.*

11. NOTICE—*continued.*

to convey to a subsequent purchaser, who, at the time of such subsequent conveyance, has notice of the prior right of the third person, and such subsequent purchaser will take the property free from the in-

[illegible]

perty which he innocently acquired. On the same principles, any subsequent purchaser, however remote, though having notice, must be protected. Where, therefore, the second defendant, having notice of the plaintiff's equitable mortgage, purchased from one who, also with such notice, had purchased from a *bonâ fide* purchaser for value without notice,—*Held* that the second defendant held the property free from the equitable mortgage. *Carter* v. *Carter, 3 K. and Johns, 617,* distinguished. DAYAL JIVRAJ *v.* JAIRAJ RATANSI . . . I. L. R., 1 Bom., 273

100. ——————— *Bonâ fide transferee for value of mortgaged property—Ignorance of existing incumbrance.*—*Held* that a statement in answer to interrogatories which was made by the purchaser of mortgaged property, to the effect that at the time of the purchase he was aware of the mortgage and believed that it had been satisfied, was no proof of the purchase having been made after notice of a prior mortgage, inasmuch as it was inconsistent with the knowledge of an existing incumbrance. SHEO DAYAL MAL *v.* HARI RAM

I. L. R., 7 All., 590

101. ——————— *Purchaser for value—Notice of prior mortgage.*—The plaintiff in

[illegible]

a sankhat. On the attachment of the immoveable property in execution of that decree, the defendant objected under s. 246 of the Civil Procedure Code, and alleged that he had purchased the property in 1865. The attachment having accordingly been raised, the plaintiff sued for a declaration of his right to sell the mortgaged property. Both the lower Courts threw out the plaintiff's claim. On special appeal the decrees of the lower Courts were reversed, and the case remanded for the trial of the issue whether the defendant was a *bonâ fide* purchaser for valuable consideration, without notice of the plaintiff's sankhat or lien on the property in dispute at or before the time of his purchase. GIRDHAR RANCHODDAS *v.* HALAMCHAND REVACHAND

8 Bom., A. C., 75

102. ——————— *Priority—Registration—Possession—Subsequent purchaser with notice obtaining possession and paying off mortgage—Right to recover sum applied in paying off mortgage.*—The plaintiff sued to recover land purchased by him in 18[illegible]6 from the first defendant, and which was in possession of defendants 2, 3, and 4. The conveyance to the plaintiff was duly registered. The third defendant claimed part of the land under a previous sale to him in 18[illegible] by the first defendant. The conveyance to him being also duly registered

[illegible]

He relied upon the fact of his having got possession, and he alleged that the purchase money which he had paid for the land had been applied by the first defendant in paying off a mortgagee who at the date of his purchase was in possession. He claimed at all events, the repayment of this sum. *Held* (1) that the plaintiff was not entitled to the lands in the hand of the third defendant, the latter being a prior purchaser with a deed of conveyance duly registered. (2) That the plaintiff was entitled to the land in the possession of the fourth defendant, who must be taken to have purchased with notice of the plaintiff's prior purchase, inasmuch as the deed of conveyance to the latter was registered. (3) That, if the fourth defendant's purchase money was applied to pay off a mortgage which plaintiff would otherwise have had to pay, the plaintiff could not equitably recover the land without paying the fourth defendant so much of the purchase money as was so applied. NARAYAN LAKSHMAN *v.* BABU VALAD HAIBATRAV

I. L. R., 17 Bom., 741

103. ——————— **Transfer of property subject to trust**—*Purchaser for value—Constructive notice—Tenant in possession as object of charitable trust.*—If the purchaser of an estate for value takes with notice, actual or constructive, of a trust, he is bound by such trust to the same interest and in the

[illegible]

tenant, and if he neglects to do so he takes subject to such rights as the tenant may have. The equities are the same where there is a person in possession as the object of a charitable trust and under the trust. MANCHARJI SORABJI CHULLA *v.* KONGASOO

6 Bom., O. C., 59

104. ——————— *Sale by landlord subject to rights of tenants—Notice to purchaser of rights—Suit by tenants to enforce rights against purchaser—Limitation.*—In 1[illegible]0 the East India Company granted a village to [illegible], subject to the raiyats' customary rights and privileges which were embodied in Regulation I of 18[illegible]8, but the deed of conveyance was not passed until 18[illegible]3, and it was then executed to the executors of [illegible], who had died in the meantime. This deed made no reference to the rights and privileges of the raiyats. In 18[illegible] the defendant purchased the village from its legal owners. In 18[illegible] plaintiffs sued defendant for themselves and on behalf of the other raiyats of the village to enforce their rights. The defendant pleaded that, as the deed of conveyance of 18[illegible] made no mention of these rights, he was not bound by them. *Held* that, as at the time of the conveyance of the village to the defendant the lands were in the occupation of the raiyats, the defendant ought to have made inquiry as to their rights. Having found

to do this, he was bound by the rights of the tenants as much as if they had been specially mentioned in the conveyance to him. *Mancharji Sorabji* v. *Kongseoo, 6 Bom. H. C. Rep., 59,* followed. *Held* also that, as there had been no denial of plaintiff's rights until shortly before the suit, it was not barred by limitation. AHMEDBHOY HABIBBHOY *v.* BALKRISHNA MUKUND . I. L. R., 19 Bom., 391

105. ———— *Notice—Right of purchaser.*—*B*, having been sentenced to transportation for life, presented a petition in the Revenue Court, in which, stating that he owned a certain zamindari estate, and that he had been so sentenced, and that it was necessary to make arrangements for the payment of the Government revenue and the management of the estate, he prayed that his name might be removed from the revenue register and that of *P* recorded in its stead. *P* sold the property for consideration, his vendee purchasing without notice of any trust, and it was subsequently put up for sale in execution of a decree against *P*'s vendee, and was purchased without notice of any trust. *Held* that the property could not be followed into the hands of the purchaser at the execution-sale. *Durga Prasad* v. *Asa Ram, I. L. R., 2 All., 361,* observed on. HAIT RAM *v.* DURGA PRASAD

[I. L. R., 5 All., 603

106. ———— Constructive notice—*Person in possession of subject of sale.*—Where there is a person in possession of an estate other than the nominal owner,—*i.e.*, the person in whose name the title-deed is,—a purchaser, although he may be a purchaser for value, is bound to inquire what is the nature of his possession. If he does not think fit to do so, he takes subject to the rights of the person in possession. HAKEEM MEAH *v.* REEJOY PATNEE

[22 W. R., 8

MASSIM MEAH *v.* SHAM DOSS . 22 W. R., 189

107. ———— *Sale in execution of decree—Sale of property on which there is a lien.*—*Per* KENNEDY, *J.*—An execution-purchaser takes subject to all equities affecting the judgment-debtor, and will be bound by constructive notice in the same way as an ordinary purchaser. *Kinderly* v. *Jervis, 22 Beav., 1,* and *Brewer* v. *Lord Oxford, 6 De G., M. & G., 507,* cited and followed. RAM LOCHUN SIRCAR *v.* RAM NARAIN . . 1 C. L. R., 296

108. ———— *Doctrine of constructive notice—Secrecy in transaction.*—The Court will not apply the doctrine of constructive notice where the party seeking the benefit of that doctrine has been guilty of secrecy in the transaction with constructive notice of which he seeks to affect a purchaser. HORMASJI TEMULJI *v.* MANKUVARBAI

[12 Bom., 262

109. ———— *Notice to agent of purchaser.*—Notice to a purchaser's agent was held to be constructive notice to his principal, so as to fix the latter with a trust, or a burden relative to the subject of purchase which without notice he would have escaped. SEEDEE NAZEER ALI KHAN *v.* OJOODHYA RAM KHAN. MUNSOOR ALI KHAN *v.* OJOODHYA RAM KHAN . . . 8 W. R., 399

110. ———— *Liability of land purchased from Hindu devisee for debts of his testator—Onus probandi.*—*Per* PONTIFEX, *J.*—The question how far lands purchased from a Hindu devisee are liable in the hands of the purchaser for the testator's debts stands on the same footing as a similar question would under the present English law. The creditors of the ancestor or testator may follow his lands into the possession of a purchaser from the heir or devisee, if it can be proved that such purchaser knew (1) that there were debts of the ancestor or testator left unsatisfied, and (2) also that the heir or devisee to whom he paid his purchase-money intended to apply it otherwise than in the payment of such debts. But a purchaser ignorant on either of these points has a safe title, for no duty is cast upon the purchaser from the heir or devisee to inquire whether there are any debts of the ancestor or testator, or to see to the application of his purchase-money, even when there is an express charge of debts by the testator on the devised estate—at least when the devisee is also executor; and in such a case the burden of proof is entirely on the creditor to show that the purchaser from the devisee had notice that the latter intended to misapply the purchase-money. For a purchaser to be affected with constructive notice through his solicitor, the latter himself must have actual notice. GREENDER CHUNDER GHOSE *v.* MACKINTOSH

[I. L. R., 4 Calc., 897: 4 C. L. R., 193

111. ———— *Specific Relief Act (I of 1877), s. 27—Specific performance of a contract, Suit for—Whether registration of an ekrarnamah was sufficient notice of the contract.*—Mere registration of an ekrarnamah is not sufficient notice of a contract within the meaning of s. 27 of the Specific Relief Act. PREONATH CHATTOPADHYA *v.* ASHUTOSH GHOSE

[I. L. R., 27 Calc., 358
4 C. W. N., 490

112. ———— The question whether registration is notice or not is a question of fact, and as each case arises, it should be determined whether the omission to search the register together with other facts amounts to such gross negligence as to attract the consequence which results from notice. *Tomb* v. *Rand, 2 Bro. C. C., 652; Evans* v. *Bicknell, 6 Ves., 174; Martinez* v. *Cooper, 2 Russ., 198; Farrow* v. *Rees, 4 Beav., 18; Hunt* v. *Elmes, 2 DeG, F. & J., 578;* and *Agra Bank* v. *Barry, L. R., 7 H. L., 148,* referred to. MONINDRA CHANDRA NANDY *v.* TROYLOKHONATH BURAT

[2 C. W. N., 750

113. ———— *Fraud—Registration Acts, Effect of.*—When a person is proved to have had a knowledge of certain facts, or to have been in a position the reasonable consequence of which knowledge or position would be that he would have been led to make further inquiry, which would have disclosed a particular fact, the law fixes him with

VENDOR AND PURCHASER—*continued.*

II NOTICE—*continued*

having himself had notice of that particular fact There may be such wilful negligence in abstaining *from inquiry into facts which would convey actual* n [illegible] *have the conse* [illegible]

may apply as against third perso [illegible] to call for deeds and documents of title, but not to the same extent where a Registration Act is in operation as it would where no Registration Act prevails *Agra Bank v Barry, L R, 7 H L, 135,* followed If an agent authorized to sell property commits a fraud against his principal, the principal is the person who ought to suffer, and not a stranger DOORGA NARAIN SEN v BANEY MADHAB MOZUMDAR . I. L. R., 7 Calc., 199

114. ——————— *Registration—Possession—Registration Acts, Effect of—English Registry Acts, Stat 7 Anne, c 20, s 1, 2 & 3 Anne, c 4, s 1; 6 Anne, c 35, s. 1, 8 Geo 2, c 6, s 1—Irish Registry Act 6 Anne c 2 s 4 (Ireland)* —Neither in England nor in Ireland has mere registration been held to amount to notice to subs [illegible] th [illegible] Am [illegible] to [illegible] pro [illegible] Ma [illegible] Boml [illegible] perso [illegible] who [illegible] able property [illegible] claim of him who is in possession [illegible] risk This is the rule in England also. The Indian Registration Acts prior to the year 1864, like the Middlesex Registry Act (Stat 7 Anne c 20, s 1); the Yorkshire Registry Acts (Stat. 2 & 3 Anne, c 4, s 1; 6 Anne, c 35, s 1; 8 Geo. II, c 6, s. 1), and the Irish Registry Act (Stat. 6 Anne c 2. s. 4, Ir), gave priority of rank to priority of registration The later Indian Registration Acts—*viz*, Acts XVI of 1864, XX of 1866 VIII of 1871, and III of 1877—proceed upon a different principle Under them a registered instrument operates from the time at which it would have commenced to operate if no registration had been required or made, and not from the time of its registration which rule applies both to compulsory and optional registrable *instruments. The earlier decisions, by which registration* has in India been permitted to supply the want of possession, may be attributed to this absolute preference so accorded by the earlier Registration Acts to priority of registration In the reported case under the Indian Registration Acts passed in, and subsequent [illegible] which have not (like the previous enact [illegible] priority of regn [illegible] registration as [illegible]

VENDOR AND PURCHASER—*continued*

II NOTICE—*continued.*

[illegible] XVI of 1864 and the subsequent [illegible] notice, and therefore to atone for the absence of, and to [illegible] substitute for possession in the [illegible] in date has been effected subsequently to the [illegible] of the instrument set up against it. LAKSHMAN DAS SARUPCHAND v DASRAT

[I. L. R., 6 Bom., 168

115. ——————— *Priority—Possession—Vendor and purchaser—Purchaser without possession—Subsequent purchaser with possession and without notice of prior purchase.*—The plaintiff purchased the land in dispute on the 28th February 1878, and on the same day lodged his deed of purchase with the Registrar together with the registration fee It was registered on the 29th April 1878 He was not put in possession of the property The defendant purchased the same property on the 1st April 1878 and on the following day lodged his deed of purchase with the Registrar together with the registration fee It was registered on the 26th May 1878 His purchase was accompanied with possession. *In a suit brought by* the plaintiff against the vendor and the subsequent [illegible] possession of the property —*Held* that [illegible] notice of the plaintiff's deed to [illegible] therefore could not be equivalent to possession. *Held* also that as the defendant was a purchaser without notice, either actual or constructive of the plaintiff's prior purchase, and had taken the precaution of obtaining possession, both parties being Hindus and innocent purchasers the defendant could not be deprived of the benefit of his possession HASHA v RAMJO . I. L. R., 6 Bom., 165

116 ——— Priority — *Notice of prior contract—Specific Relief Act 1877, s 27—Oral agreement—Sale to third person in contravention of agreement—Civil Procedure Code, 1882 ss 231, 262* —Where a *bona fide* contract whether oral or written, is made for the sale of property and a third party afterwards buys the property with *notice of the prior contract, the title of the party claiming* under the prior contract prevails against the subsequent purchaser although the latter's purchase may have been registered and although he has obtained possession under his purchase CHUNDER KANT ROY v KRISHNA SUNDER ROY

[I. L. R., 10 Calc., 710

See NEMAI CHARAN DHABAL v KOKIL BAG

[I. L. R., 6 Calc., 534: 7 C. L. R., 487

117. *Sale in execution*

Gujrat—Priority—Priority as between a purchaser at execution sale and prior mortgagee by

unregistered san-mortgage—Plea of purchase without notice.—The general rule in the Presidency of Bombay is that amongst Hindus possession is necessary in order to perfect a transfer of immoveable property by mortgage or deed of sale as against subsequent incumbrancers or purchases. The main ground of this rule is that possession is notice to all subsequent intending mortgagees or purchasers of the title of the party in possession. It is, however, the established and judicially recognized custom of Gujarat that possession is not necessary in the case of a san-mortgage to validate it as against subsequent mortgagees or purchasers. The necessity of possession being thus dispensed with, it seems to follow that a san-mortgage, in other respects good, is valid as against a subsequent mortgagee or purchaser, whether or not such mortgagee or purchaser has notice of the san-mortgage. To hold that a subsequent mortgagee or purchaser for valuable consideration and without notice of a san-mortgage is entitled to priority over it would be tantamount to depriving the san-mortgagee of the benefit of the custom that possession is unnecessary. *Per* MELVILL, *J.*—Such perfect security is now afforded by registration that there appears to be hardly room for the plea of purchase without notice. Seeing that a purchaser may secure himself against all unregistered mortgages without possession by simply taking possession or registering his conveyance, he is, if he omit to do so, in *pari delicto* with the prior mortgagee, and it is difficult to see how he is entitled to any relief. SOBHAGCHAND GULABCHAND *v.* BHAICHAND . . . . I. L. R., 6 Bom., 193

12. POSSESSION.

118. ——— Vendor remaining in possession—*Presumption.*—Where a deed was executed conveying a man's entire property to his son, only two years old and reserving to himself one rupee a day for his subsistence, and after execution the conveying party remained in possession,—*Held* that, in the absence of explanation, no other inference could be drawn than that the deed was merely intended to be used as a blind. SREENATH SINGH CHOWDHRY *v.* HUREEPREA . 10 W. R., 449

119. ——— *Condition of sale—Acceptance of security by vendor—Suit to realize security.*—The defendant purchased certain jewels at a sale by auction subject to a condition that, if not paid for in three days, the goods should be sold at the risk of the purchaser. Being unable to pay within the time stipulated, he gave a promissory note for the price, upon an agreement that the vendor should retain the jewels for him, but should not exercise the power of sale within three days. *Held* that the vendor could sue on the note, though he retained the jewels in his possession under the lien so created. ALLEN, HAYES & CO. *v.* ANUNDO CHUNDER MUNDLE . Bourke, O. C., 156

120. ——— Absence of change of possession—*Hindu law—Incomplete sale.*—According to Hindu law, a change of possession is necessary to complete a sale of corporeal property, in order to prevent successive purchasers from being cheated by successive sales of the same property, and to obviate disputes as to what was really sold. A purchaser from a Hindu vendor, who buys corporeal property without possession, *does not* thus obtain a title which in a suit for specific performance against the vendor, he can enforce against a person actually in possession under a title adverse to the vendor by joining that person as a defendant. KACHU BAYAJI *v.* KACHOBA VITHOBA . . 10 Bom., 491

121. ——— Necessity of change of possession—*Hindu and Mahomedan laws—Priority.*—It is a general but not an invariable rule that possession in the grantee or assignee is deemed essential amongst Hindus and Mahomedans to the complete transfer of immoveable property, either by gift, sale, or mortgage. Exceptions to the above rule pointed out. LAKSHMAN DASS SARUPCHAND *v.* DAVRAT [I. L. R., 6 Bom., 168

SOBHAGCHAND GOLABCHAND *v.* BHAICHAND [I. L. R., 6 Bom., 193

122. ——— *Hindu law—Delivery of possession—Notice.*—Delivery of possession of property sold is, under the Hindu law, essential to complete the title of the vendee against a third party purchasing with possession from the same vendor without notice of the prior transaction. The rule prevails as between competing conveyances both of which have been registered. Authorities and Hindu law texts on the subject reviewed. LALUBHAI SURCHAND *v.* BAI AMRIT [I. L. R., 2 Bom., 299

123. ——— Sale when vendor is not in possession—*Hindu law—Necessity of possession—Ejectment.*—A Hindu, whose estate is in the possession of a trespasser or a mortgagee, may sell his right of entry as such, or his equity of redemption as such, and the purchaser may thereupon sue to eject the trespasser or to redeem the mortgage; but a bill of sale by a Hindu vendor purporting to convey the estate itself, executed by a person who is not in possession, cannot operate as a present conveyance, nor enable the purchaser to sue in ejectment. *Prahlad Sen* v. *Budhu Singh, 2 B. L. R., P. C., 111,* and *Bhobosoonduree Dasseah* v. *Issur Chunder Dutt, 11 B. L. R., 36,* followed. *Bikan Singh* v. *Parbutty Koer, 22 W. R., 99; Gungahurry Nundee* v. *Raghubram Nundee, 14 B. L. R., 307;* and *Lokenath Ghose* v. *Juggobundhoo Roy, I. L. R., 1 Calc., 297,* referred to. BAI SURAJ *v.* DALPATRAM DAYASHANKAR . . I. L. R., 6 Bom., 380

124. ——— Possession, Delivery of—*Hindu law—Sale.*—Possession is not essentially necessary by Hindu law to give validity to a transfer by sale of immoveable property. BHUKAN BHAIBAVA *v.* BHAIJI PRAG . . . 1 Bom., 19

125. ——— *Title—Hindu law.*—Delivery of possession is not necessay to the transfer of ownership among Hindus. *Per* MARKBY, *J.*—As a general rule of law, when a vendee has got

VENDOR AND PURCHASER—*continued*

12. POSSESSION—*continued.*

a document which in terms professes to make over property, and the document is registered (in case registration is necessary), he becomes at once the owner without actual delivery of possession. GUNGAHURRY NUNDEE *v.* RAGHUBRAM NUNDEE

[14 B. L. R., 307 : 23 W. R., 131

126 —— *Hindu law—Per curiam.*—Delivery of possession is not, under the Hindu law, essential to complete the title of a purchaser for value. NARAIN CHUNDER CHUCKERBUTTY *v.* DATARAM ROY

[I. L. R., 8 Calc., 597 : 10 C. L. R., 241

NAGUBAI *v.* MOTIGIR GURU . . 1 Bom., 5

127. — — *Hindu law*—Under the Hindu law current in the Madras Presidency, possession is not necessary to complete a sale. VASUDEVA LHALLU *v.* NARASAMMA

[I. L. R., 5 Mad., 6

128. — Want of possession—*Hindu law—Sale before Transfer of Property Act—Possession*.—Under the law administered in the Madras Presidency in the case of sales of land between Hindus made before the date of the Transfer of Property Act, 1882, where all has been done that the parties contemplated to complete a sale the title of the purchaser cannot be defeated in favour of a second purchaser merely by reason that the latter obtained and the former did not obtain possession. RAMASAMI AYYANGAR *v.* MARIMUTTU BHATTAN

[I. L. R., 6 Mad., 404

129 *Sale of land by a Hindu—Vendor without possession—Conveyance of right of action*.—Where a Hindu vendor sold his share in certain land, but expressly stated in the deed of sale that he was out of possession, that the land was in the hands of a third party, to whom it had been mortgaged without the vendor's authority; and that he (vendor) empowered the purchaser to bring a suit against the person in possession in order *to recover* the vendor's share in the land, with *mesne* profits,—*Held* that what the deed contemplated was nothing more than the transfer of the right of entry, although, according to the invariable mode of expression in such documents, the vendor professed, in terms, *to convey the property itself*. *Held further* that the purchaser acquired the same right of action which his vendor possessed, notwithstanding that the vendor was not in possession at the date of the sale. VASUDEV HARI *v.* TATIA NARAYAN

[I. L. R., 6 Bom., 387

130 — *Transfer of property by a person not in possession—Validity of such transfer—Hindu law*.—The plaintiffs sought to recover possession from the defendants of certain land, claiming under a kararnama executed to them by one *M.* The defendants contended that *M* had never been in possession of the land. The lower Appellate Court held that, as *M* was not in possession at the time, when the kararnama was executed, the plaintiff's claim was not maintainable. On appeal to the High Court,—*Held*, reversing the decree of the lower Appellate Court, that the circumstance of *M's* not having been in possession at the time the kararnama was executed did not prevent the plaintiffs from recovering possession from the defendants. *Kalidas v. Kanhaya Lall, I. L. R., 11 Calc., 121 : L. R., 11 I. A., 219,* referred to and followed. LOARCHAND MANACKCHAND *v.* MADAPA SOMANA . - I. L. R., 8 Bom., 314

131. *Hindu law—Sale of land*.—Though by Hindu law on a sale of land it is not absolutely necessary that the purchaser should be put in possession, it is requisite that the vendor should at the time of sale be in possession of the property sold. GIRDHAR PARIARAM *v.* DAJI DULABHRAM 7 Bom., A. C., 4

132.— ———— *Mahomedan law—Sale when vendor is out of possession*.—A sale among Mahomedans, unlike a sale between Hindus, is valid as against a third party even though the vendor was not at the time of the sale in possession of the property sold. ADAMKHAN *v.* ALABAKHI

[I. L. R., 6 Bom., 645

See also MOHINUDIN *v.* MANCHERSHAH

[I. L. R., 6 Bom., 650

13. PURCHASE OF MORTGAGED PROPERTY.

133. ——Bonâ fide purchase without notice of prior charge—*Per* PEACOCK, *C J*, NORMAN and PUNDIT *JJ* (BAYLEY and CAMPBELL, *JJ*, dissenting).—The fact of a purchase of land under a deed of sale being *bonâ fide* and without notice of a prior charge does not pass the land free from the prior charge. MAHESWAR BAX SING *v.* BHIKHA CHOWDHRY

[B. L. R., Sup. Vol., 403

1 Ind. Jur., N. S., 122 : 5 W. R., 61

134. — Obligation of purchaser—*Inquiry by intending purchaser.* An intending purchaser of property which has been previously mortgaged, who has no reason to suppose it to be joint family property, or the vendor to be a member of a joint family, and who has inquired of and learnt from the mortgagee that there was no fraud is not bound to make any further inquiry. KYLASH KAMINEE DOSSEE *v.* TARINEE CHURN BOSE

[20 W. R., 100

135 —— Priority—*Mortgage—Possession—Registration.*—A registered mortgagee, though without possession, is entitled to priority over a subsequent purchaser. SUNDAR JAGJIVAN *v.* GOPAL BHIKAJI . . . 1 Bom., A. C., 83

But an unregistered mortgage without possession is not valid against a purchaser with possession. GANPAT HAJASHET *v.* KHANDU CHAUGULE

[4 Bom., A. C., 69

136. — Mortgage by member of joint Hindu family—*Surrender of equity of redemption—Purchaser for valuable consideration*—

Pleading.—A member of a joint Hindu family granted a usufructuary mortgage; he subsequently, without the knowledge of the co-partners, released the equity of redemption. On hearing of this, the co-partners contested the validity of the release. *Held* that the parties claiming from the person to whom the release was made, took, so far as the co-partners were concerned, a title only as mortgagees. RADHANATH DAS *v.* ELLIOTT . . . 6 B. L. R., 530

S. C. RADHANATH DAS *v.* GISBORNE & Co. [15 W. R., P. C., 24 : 14 Moore's I. A., 1

137. ——— **Purchase by mortgagee**—*Possession—Priority—Registration.*—A registered mortgage without possession has priority over a subsequent registered sale and conveyance with possession. By a duly registered deed, *D* mortgaged land to the plaintiff with power of sale. On default made by *D*, the plaintiff brought a suit for a sale of the mortgaged land; but pending the suit, *D* sold the land to the defendant, who registered his conveyance and entered into possession. The plaintiff subsequently obtained a decree, and at the execution-sale became himself the purchaser. In the present suit he sought to recover possession from the defendant. *Held* that the plaintiff was entitled to recover. His rights as mortgagee included the right of bringing to sale the property as it subsisted at the date of the mortgage. The property having been so brought to sale, the purchaser acquired a right free from any created subsequently to the mortgage and subject to it. SHRINGARPURE *v.* PETHE [I. L. R., 2 Bom., 662

138. ——— **Rights of mortgagee**—*Mortgage sale without disclosing—Estoppel.*—The three senior members of an undivided Hindu family—the remaining members of which had disappeared—setting forth a ground of necessity, executed to the plaintiff, in November 1870, a mortgage, duly registered, of a piece of land which formed part of the family estate. Certain judgment-creditors of the absent member subsequently attached and sold his share in the said land under their decree. The plaintiff's undivided son purchased it, and in 1872 re-sold his right, title, and interest in it to defendant's father, without disclosing the fact of his father's mortgage, but without any active fraud on the part of himself or his father to suppress the fact from the knowledge of his purchaser. In 1874 the plaintiff obtained a decree upon his mortgage, and attached the land. In a suit by the plaintiff to establish his right as against all the land included in his mortgage,—*Held* that the mortgage being, under the circumstances, a valid one, the sale of the absent son's share was subject to the lien created thereby, which lien was not disturbed by the purchase and subsequent sale of the share by the son of the mortgagee. The origin of the son's title was stated in the deed of sale of the new purchaser, who, by the fact of its being a sale of a share, was put upon inquiry. The mere want of disclosure by the plaintiff's undivided son of his father's mortgage was not enough to create an estoppel against his father seeking to establish his claim under the mortgage. JOSHI *v.* JOSHI [I. L. R., 2 Bom., 650

139. ——— *Sale of equity of redemption—Right of purchaser—Parties.*—By two deeds dated respectively the 22nd February 1868 and 7th September 1872, and duly registered, *A* mortgaged the lands in dispute to *B* for a term of years which expired in 1880. On 10th October 1873, *A* executed a razinama in favour of *B*, relinquishing all his right in the said lands, and *B* next day executed a kabuliat to Government for the lands, which thenceforward were entered in *B*'s name. Previously to the second mortgage and razinama to *B*,—*viz.*, on 21st March 1870—*A* had, by a duly-registered deed, mortgaged the same lands to the plaintiff, who in 1874 brought a suit against *A* upon his mortgage and obtained a decree, under which he sold the mortgaged property, and became himself the purchaser thereof. Before and at the time of the institution of this suit, *B* was in possession of the mortgaged land, but was not made a party to the suit. In 1877 *B* sold the land to *C* by a duly registered deed. In a suit brought by the plaintiff against *B* and *C* to recover possession of the land so purchased by him as above mentioned, at the sale in execution of his own decree,—*Held* that *B*'s possession at the date of the plaintiff's suit upon his mortgage was sufficient to put the plaintiff on inquiry, and to constitute legal notice to him that the equity of redemption was at that time vested in *B*, and it was therefore the plaintiff's duty to have made *B* a party to the suit brought by him against *A*, who had then alienated the equity of redemption to *B*; and not having done so, the plaintiff could not rely, in support of his own title, upon a purchase under his own irregularly-obtained decree, and could not therefore stand in a better position as against *B* than if his original suit had been properly constituted,—*i.e.*, he was bound to give *B* an opportunity of redeeming his mortgage. NARU *v.* GULABSING [I. L. R., 4 Bom., 83

140. ——— **Purchase subject to mortgage**—*Right to redeem—Good title at time of hearing of suit—Certificate of sale.*—The property in dispute was mortgaged by its owner to the defendant with possession on the 3rd October 1847. On the 3rd December 1841 *A* obtained a money-decree against the son and heirs of the mortgagor. In execution of that decree, the property was sold subject to the mortgage, and purchased by *B* on the 12th August 1864. Before confirmation of the sale, *B*, on the 1st September 1864, sold it to *C*, who, on the 30th March 1877, conveyed it by deed to the plaintiff. On the 27th September 1877 the plaintiff brought a suit for redeeming the property, and at the hearing produced a certificate of sale, dated the 27th October 1877. The certificate was applied for in May 1877, and issued to *C*, reciting the sale to *B*, and the sale by *B* to *C*. The Court of first instance allowed the plaintiff to redeem on payment of a certain sum of money to the defendant. The Assistant Judge, on appeal, reversed the decree of the first Court on the

ground that the certificate of sale was not in existence at the date of the institution of the suit, and that therefore the plaintiff had then no complete title. On appeal to the High Court,—*Held* that the plaintiff, having purchased and paid for the equity of redemption, was entitled to redeem, although the certificate of sale was not issued until after the suit had com-

[illegible]

141. — — **Purchaser of mortgagor's interest**—*Priority—Purchaser of value without notice of a prior san-mortgage—Suit by mortgagee against purchaser to establish right to attach pro-*

[illegible]

sion On the 27th July 1860 *D* and *T* sold the house to the defendant. The deed of sale was not registered. A part of the purchase money was applied to the payment of the first san mortgage, which was then delivered up to the defendant, with a receipt on it by *J*, who acknowledged to have received from the

[illegible]

in 1872 obtained a decree for the recovery of the mortgage-debt out of the mortgaged property The defendant was not made a party to that suit The plaintiff attached the house in execution of his decree, but the attachment was raised on the application of the

Code

[illegible] and sell the house under his san mortgage The defendant answered that he was a purchaser for value, without notice of the plaintiff's mortgage The plaintiff's claim was dismissed by the first Court, but allowed by the Appellate Court. On special appeal,—*Held* that the defendant's plea that he was a purchaser for valuable considera-

[illegible]

made a party to the plaintiff's original suit on his mortgage, and was not bound by the decree in that suit, and was entitled to a reasonable time to redeem

the house from the plaintiff's mortgage *Sobhagchand Gulabchand v. Bhaichand, I. L. R., 6 Bom., 193,* followed. NARAN PURSHOTAM *v.* DOLATRAM VIRCHAND . . . I. L. R., 6 Bom., 538

142. — — *Assignment of the equity of redemption by the mortgagor—No notice to mortgagees of such assignment—No change of name in Collector's books—Further advances by mortgagees to original mortgagor on same security—Suit by assignee of equity of redemption to redeem—Liability of assignee to pay off the further advances to mortgagor—Standing by—Allowing original mortgagor's name to remain in Collector's books—*

[illegible]

be considered analogous to the holder of the legal estate in English law By a registered mortgage-deed *P* in 1869 mortgaged certain property with pos

[illegible]

title as assignee of the equity of redemption was complete, although no notice of the assignment had

[illegible]

conduct would give the defendants a better equity If the property was standing in *P*'s name in the Collector's books, the allowing it so to remain after the assignment would be sufficient for the purpose GOVINDRAV *v.* RAVJI . I. L. R., 13 Bom., 33

143. — *Unregistered agreement by mortgagor to sell to mortgagee—Subsequent assignment of equity of redemption to third person for value, but with notice of agreement*—In a suit for redemption filed by an assignee for value of the equity of redemption against a mortgagee in possession, it was found that the mortgagor had agreed with the defendant to sell the mortgaged

VENDOR AND PURCHASER—*continued.*

13. PURCHASE OF MORTGAGED PROPERTY —*concluded.*

premises to him, that part of the purchase-money had been acknowledged as paid, and that the balance had been tendered in pursuance of the agreement. It was further found that the plaintiff had taken his assignment with notice of the above agreement and tender. The agreement was in writing, but not registered. *Held* that, though the agreement was not admissible in evidence as creating an interest in land, still it might be used for the purpose of obtaining specific performance, and the plaintiff having purchased the equity of redemption with notice as above was not entitled to redeem. *Per cur.*—The plaintiff having knowledge of the agreement was put upon enquiry to ascertain whether the tender had been made, and whether there was any objection to his purchase on that ground. ADAKKALAM *v.* THEETHAN

[I. L. R., 12 Mad., 505

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER.

144. ———— **Non-payment of purchase-money**—*Tender—Payment into Court—Suit for specific performance.*—Plaintiff had entered into a contract with one of the defendants for the purchase of certain immoveable property, and after he made a small advance the contract was written out and registered. The purchaser refusing to pay up the purchase-money unless the vendor paid the costs, or half the costs, of registration, the latter resold the property to a third person. The present suit was to compel the completion of the contract and delivery of the property. *Held* that the Court was bound to see whether it was or was not the intention that a complete and binding sale should take place, although the purchase-money was not paid. *Held* also that in bringing such a suit the plaintiff was bound, if he had not previously tendered the money to the defendant, to pay it into Court. MAHADOO BEGUM *v.* HUBEEBOOL HOSSEIN . . . 15 W. R., 44

145. ———— **Advance of purchase-money**—*Lien on purchase—Repayment—Suit for possession.*—*B* advanced money to *A* for the purchase of an estate. The estate was purchased by *A*, but it was conveyed to *B*. *Held* that, before *A* could maintain a suit to obtain possession of the land, he was bound to pay or tender the money advanced by *B*. BHOYRUB CHUNDER SEIN *v.* ANUNDMOYE CHOWDHRAIN . . . . . Marsh., 494

146. ———— **Right to refund of purchase-money**—*Failure to give possession—Suit for purchase-money.*—A purchaser of property of which possession was contracted to be given, but the vendor is unable to fulfil the contract, is at liberty to sue for repayment of the purchase-money, and is not obliged to sue for possession of the property. MOHUN LAL *v.* BEHAREE LAL . . . 3 N. W., 336

147. ———— *Bonâ fide purchaser—Refund of purchase-money.*—A *bonâ fide* purchaser was held to be entitled to a refund of the purchase-money in a case where some dispute having arisen as to the purchase, the matter was referred to arbitration; and it was held that the vendor had no authority to sell. The principle of *caveat emptor* does not apply to such a case. KISHEN MOHUN SHAHA *v.* RAM CHUNDER DEY . . . 3 W. R., 28

148. ———— *Refusal to perform contract—Omission to repudiate sale—Suit for recovery of purchase-money.*—The defendants had sold certain property to the plaintiff. They afterwards refused to effect mutation of names in favour of the plaintiff, on the ground that he had not paid off a certain mortgage on the property, which he had promised in the contract of sale to do. They did not repudiate the sale or the plaintiff's title under it. *Held* that the refusal was not tantamount to a rescision of the sale, and that a suit for the recovery of the purchase-money would not lie. SIRAJ-OOD-DOWLAH *v.* NOOR AHMUD . . . . 5 N. W., 194

149. ———— *Suit to recover deposit of purchase-money—Obligation to tender conveyance for execution.*—In a suit by a purchaser of immoveable property to recover a deposit, paid by him on account of the purchase-money to the auctioneer, the vendor having refused to convey to the purchaser, save by a deed which should describe the premises by reference to another deed, not shown to the purchaser at the auction, and of the contents of which he had not then any notice,—*Held* that the purchaser was not bound to have tendered a conveyance engrossed to the vendor for execution, together with the residue of the purchase-money, before suing to recover the deposit. ESSAJI ADAMJI *v.* BHIMJI PURSHOTAM . . . . 4 Bom., O. C., 125

150. ———— *Illegal sale—Sale by co-parceners without assent of others.*—Where a sale by two co-parceners in favour of another was set aside, on the ground that the sale by a co-parcener without the consent of the others was illegal,—*Held*, on the suit of the vendee to recover the purchase-money from the descendants of the vendors, that the purchase-money was like a debt, and payable by the heirs, in proportion to the shares inherited by each. OOMEDEE *v.* CHEDA LALL . 2 Agra, 264

151. ———— *Refund of purchase-money by heir taking after widow.*—*Held* that a party succeeding as heir to an estate, the sale of which, by the widow of the person from whom he inherits, has been set aside, is bound to refund the purchase-money paid to the widow for the purpose of discharging liabilities on the estate. ROOSTUM SINGH *v.* ALUM SINGH . . . . 1 Agra, 291

152. ———— *Failure to register—Suit for refund of purchase-money—Set-off.*—The plaintiff agreed to purchase land and paid down the purchase-money, taking from the vendor an agreement that if he did not register the conveyance he would return the purchase-money. The plaintiff entered into possession, but the vendor failing to register the conveyance, he sued to recover back his purchase-money. *Held* that he was entitled to a

VENDOR AND PURCHASER—*continued.*
14 PURCHASE MONEY AND OTHER PAYMENTS BY PURCHASER—*continued.*

refund of the purchase money. The purchaser who [illegible] the vendor could only claim such amount by a separate action COURT OF WARDS *v.* NITTA KALI DEBI 3 B. L. R., A. C., 353: 12 W. R., 287

See GURU PRASAD ROY *v.* DHANPAT SINGH
[5 B L. R, Ap, 46: 14 W. R, 20

PRABHURAM HAZRA *v.* ROBINSON
[3 B. L. R, Ap, 49: 11 W. R., 308

153. — — — — — *Purchaser at* [illegible] from his bargain and to recover the purchase-money merely because the contingency contemplated actually happens, and the property either does not become, or ceases to be, available for his benefit RAMTUHUL SINGH *v.* BISSESSUR LAL SAHOO
[15 B L. R, 208: 23 W. R, 305
L R., 2 I. A, 131

Reversing the decision of the High Court in BISSESSUR LAL SAHOO *v.* RAMTUHUL SINGH
[11 B L. R, 121, 19 W. R., 351

154. — — — *Right of vendor to interest claimed in part of purchase money left unpaid by arrangement—Tender*—By an agreement between vendor and vendee part of the purchase- [illegible] or to tender to the vendor the money retained. MUHAMMAD SINDIQ KHAN *v.* MUHAMMAD NASIR ULLAH KHAN . I. L. R., 21 All., 223
[L. R., 26 I. A, 45
3 C W. N, 201

155. — — *Deposit by purchaser under contract—Contract going off through default of purchaser—Vendor's right to retain deposit*—*Held* that where a contract for sale goes off by default of the purchaser the purchaser cannot recover any deposit which may have been paid by him to the vendor in pursuance of the contract *Ex parte Barrell In re Parnell, L. R, 10 Ch. Ap., 512,* and *Howe v. Smith, L. R., 27 Ch D., 89,* referred to. BISHAN CHAND *v.* RADHA KISHAN DAS I. L. R, 19 All., 189

156 — — — *Right of purchaser to return of deposit—Lien of purchaser for the part of the purchase money paid by him*—A purchaser of land who has paid part of the purchase-money by way of deposit, but who afterwards unjustifiably repudiates the contract of purchase, or is guilty of any default by reason of which the sale is not carried out, is not entitled to recover the deposit from the vendor The vendor is not necessarily entitled to retain the deposit merely because under the circumstances the Court refuses to grant specific performance against him From the moment part of the purchase-money is paid, the purchaser has a lien upon the property to that extent, which lien can only be lost to him by reason of his failing to carry out his part of the contract BALVANTA APPAJI *v.* WHATEKAR BABA
[I. L. R., 23 Bom., 58

157 *Unsuccessful denial of contract by defendant—Dismissal of suit by purchaser for specific performance for non payment of the balance of the consideration money within the stipulated period—Right of plaintiff to return of deposit of the part of the consideration-money paid where specific performance is refused—Equity and good conscience—Bengal, N.-W. P., and Assam Civil Courts Act (XII of 1887), s 37*—In a suit for specific performance of a contract, the [illegible] to pay the balance of the consideration money on the stipulated day, but made a decree for the refund of the deposit. On appeal by the defendant to the High Court,—*Held* that, inasmuch as the defendant unsuccessfully denied the contract *in toto*, and as there was no repudiation of the contract by the plaintiff, he (the plaintiff) was entitled to a refund of the deposit made by him ALOKESHI DASSI *v.* HARA CHAND DASS . I. L. R, 24 Calc., 897
[1 C W. N, 705

158. — *Contract to purchase property in cantonment—Rights of Government in such property—Contract making no mention of Government rights—Knowledge of purchaser—Suit by purchaser for specific performance or return of earnest money—Earnest money when repayable—Amendment of plaint so as to claim refund of earnest money*—On October 12th, 1887, the first defendant executed the following agreement in favour of plaintiff with respect to certain property situated in the Poona Cantonment "I have agreed to sell to you . both my bungalows described above, including the sites and buildings together with the compounds, rooms for servants, stables, out houses . and I have this day received from you R5,000 as earnest money After the sale-deed in regard to the said bungalows is executed, I will get them transferred to your name in the Brigade-Major's office." On the same day the first defendant received from the plaintiff R5,000 as earnest-money A notice of the proposed sale was published in the newspapers, upon which the Poona Cantonment Committee wrote to the plaintiff

VENDOR AND PURCHASER—*continued.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*continued.*

stating that Government possessed certain rights over the property. Plaintiff then demanded that the first defendant should obtain from Government and transfer to him a full and complete title in the property. The defendant refused, and prepared a draft deed transferring the ordinary cantonment tenure, which was a mere occupancy, and sent it to plaintiff. Plaintiff declined to accept it, and brought this suit to compel the first defendant to execute a deed transferring to him a full and complete title for possession of the property, and for rent and damages. Although apparently not arising upon the pleadings, an issue was raised by the parties as to whether by his conduct the plaintiff had forfeited his right to have the earnest-money returned to him. This issue was, however, struck out at the trial by the Subordinate Judge, who also refused to allow the plaint to be amended by inserting a claim for the repayment of the earnest-money, on the ground that it would change the character of the suit from being one based on the contract of the 12th October 1887 into a suit based on the fact that there had never been a contract at all between the parties. He dismissed the suit. The plaintiff appealed, and contended that the contract was that the defendant should give an absolute title to the property, and that, as he was unable to carry out this contract, he should return the earnest-money to the plaintiff. *Held* (1) upon the evidence, *per* FARRAN, *C.J.*, and FULTON, JARDINE, and RANADE, *JJ.* (CANDY, *J*, *dissentiente*), that the knowledge that the property in question was held upon cantonment tenure was not brought home to the plaintiff, and that the Court could not impute such knowledge to him; that the terms of the contract itself were calculated to induce the plaintiff to believe that the defendant was selling not a mere revocable license to occupy the land, but the land itself. The defendant agreed to sell the land, and, having done so, the onus lay upon him to show not only that he intended to sell only cantonment occupancy rights, but also that the plaintiff understood that he was purchasing the same. (2) That the defendant, being in default and being unable to give the title contracted for, should return the earnest-money to the plaintiff. *Held* by the Full Bench that the amendment of the plaint so as to make it include a claim for the refund of the earnest-money ought to have been allowed, although not asked for until a late stage of the case. The right to specific performance of a contract, or, in the alternative, to a return of the earnest-money, should be determined in one and the same suit, and the plaintiff failing to obtain a decree for specific performance should not be driven to a separate suit to recover back his deposit, if he is entitled to relief in that form. The circumstance that a purchaser is not entitled to specific performance is by no means conclusive against his right to a return of the deposit. If, having regard to the terms of the contract, he is justified in refusing to accept the title, which the vendor is able to give, he is entitled to a refund of the deposit. IBRAHIMBHAI *v.* FLETCHER [I. L. R., 21 Bom., 827

VENDOR AND PURCHASER—*continued.*

14. PURCHASE-MONEY AND OTHER PAYMENTS BY PURCHASER—*concluded.*

159. ——— **Voluntary payment**—*Payment to prevent sale.*—A payment of money to prevent a sale about to be effected in execution of a decree cannot be called a voluntary payment, whether it is made by the judgment-debtor or by a third party claiming the property. OMRITO LALL SIRCAR *v.* RAMDHUN CHAKEE . . **18 W. R., 503**

160. ——— *Payment by purchaser at execution-sale—Purchaser looking to application of money to pay debts on estate.*—A purchaser was held entitled to recover the amount paid by him on account of previous mortgages, when, in making these payments, he merely acted for the debtor who had borrowed the money from him, and what he did was to see that that money so borrowed was properly applied in clearing off the debts which rendered his own purchase unsafe, and of the existence of which he was at that time cognizant. WAJED HOSSEIN *v.* AHMED REZA . . **17 W. R., 480**

161. ——— *Sale whilst under attachment—Caveat emptor—Fraud.*—*T* sold a mauzah, of which he was owner, to *Z*. At the time of sale the mauzah was under attachment in execution of a decree obtained against *T* by *R*. *Z* paid the amount of that decree to prevent the property which she had purchased being sold in execution. *Z* was under no obligation otherwise to pay the amount of the decree. *Held* that *Z* was entitled to recover against *T* the amount so paid. ZAHURAN *v.* TAYLER [**2 B. L. R., A. C., 86 : 10 W. R., 380**

162. ——— *Purchase from Hindu widow—Alienation set aside by heir—Suit by purchaser to recover money paid on mortgage.*—The plaintiff purchased an estate from a Hindu widow in possession, and after his purchase he paid a debt for which the property sold had been mortgaged by the late husband of his vendor. Subsequently the daughter of the vendor claimed the property as heir of her father, and recovered possession of it from the purchaser by suit. The purchaser then sued the heir for a refund of the amount of the mortgage-debt paid by him. *Held* that the purchaser was entitled to recover. PORAN MISRA *v.* HARSARAN MISRA . . **8 B. L. R., Ap., 55**

15. PURCHASERS, RIGHTS OF.

163. ——— **Right to good title**—*Immoveable property.*—A purchaser of immoveable property is entitled to receive, and the vendor is bound to give, a title free from reasonable doubt. PITAMBER SUNDARJI *v.* CASSIBAI [**I. L. R., 11 Bom., 272**

164. ——— **Purchaser from Hindu executor**—*Inquiry by purchaser.*—*Semble*—A purchaser from a Hindu executor is not bound to see to the exact amount of the debts which the testator has directed the executor to pay or even to inquire if any such debts actually existed; he need

VENDOR AND PURCHASER—*continued.*

15 PURCHASERS, RIGHTS OF—*continued.*

not look further than the will itself. ROOPLALL KHETTRY *v* MOHIMA CHURN ROY [10 B. L. R., 271 note

165. —— Specific performance, Right to—*Sale bond fide, but not of final character—Priority over attaching creditor*—A deed of sale, though not strictly of a complete and final character, yet, if genuine and duly attested, may be sufficient to bind the property and to give the purchaser the right to demand a specific performance of the contract and the execution of such further assurances as might be deemed necessary to invest him with a complete title to the property. Such a deed would necessarily prevail over any intermediate attachment of the property for debts due from the original proprietor. LALLA CHOONEE LAL NAGINDAS *v.* SAWAECHUND NAMEDAS [5 W R., P. C., 111

166 —— Validity of sale—*Sale for valuable consideration—Intention to transfer*—*Held* that the mere fact that the sale to the plaintiff was instigated by some discharged mortgagee does not of necessity make void the plaintiff's right as purchaser, if it be found that the vendor to the plaintiff had some right or interest in the property by inheritance, and transferred it for valuable consideration, with the intention that it should take effect as a transfer of his rights as heir. MAHOMED FAIZALI KHAN *v* GUNGA RAM. 1 Agra, 112

167. —————— *Conveyance by mortgagee with power of sale—Absence of confirmation by mortgagor*—*B & Co*, mortgagees with power to sell, sold the mortgaged property to the defendants. No deed was executed until some years afterwards, when the mortgagor was dead. The deed was in the form followed when a mortgagee is the vendor and the mortgagors join in the conveyance but the words of conveyance were by the mortgagees alone, and without any confirmation by the mortgagor. *Held* that the purchaser did not by the deed acquire an indefeasible estate. DOUCETT *v* WISE . . . . 3 W R., 157

168. — Effect of sale—*Purchase of rights of Mahomedan widow—Failure to take actual possession*—By an order passed under Act XIX of 1841 *A* was declared entitled to take possession of

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pending when the present suit was brought by the purchasers of *A's* rights. It being found that *A* never took actual possession of her share under her decree and that *C* was in possession of the whole estate,—*Held* that *A's* vendees could not be placed in a higher position than their vendor was when *C's* suit was brought against her, and all that they were entitled to was the right to present her in the pending suit. MAHOMED GOWHUR ALI KHAN *v* AZEEMOODDEEN. MAHOMED GOHUR ALI KHAN *v* SHUKEEYUNISSA BEGUM . . . . W. R, 1864, 93

VENDOR AND PURCHASER—*continued*

15. PURCHASERS, RIGHTS OF—*continued*

169. — Purchaser of fractional share of estate—*Right to cultivate land—Rate of rent.*—In the absence of any reservation or restriction, the purchaser of a fraction of a share of an estate acquires a right either to cultivate a propor-

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other sum as mesne profits. CHITUN SINGH *v* KAYESSUR KOONWUR 5 W R., 117

170. — — Specification of land sold—*Purchase of specified land with description of amount*—A party who buys a specified talukh with the additional description that that talukh contains so much land, gets the whole land which the specification of his vendor covers and which was intended to be sold, although it may be more than was contained in the description. AMEEROONISSA KHATOON *v* KUMOLA KANT ROY . 14 W. R., 117

171. ———— ———— Omission to *specify area sold—Misdescription—Compensation for smaller area*—The specification in a deed of sale of land of the area of the land sold *primâ facie* implies that the area was regarded as material by the parties, and, unless it is clear that the precise area was not regarded as material, proportional compensation will be awarded to the purchaser of land the real area of which is found to fall short of the area specified in the deed of sale. SULEMAN VADU *v* THIKAMJI VELJI 12 Bom., 10

172. — — — *Specification in sale certificate—Sale by purchaser at execution sale who has obtained possession under a certificate of sale more extensive than the decree*—Where a decree-holder obtains an order for the sale of his judgment debtor's interest in certain property, and

[illegible]

without notice of the difference between the certificate and the order of sale, the latter has a good title. GOWREE KUMUL BHUTTACHARJEE *v* SURUTH CHUNDER DOSS BISWAS 22 W. R., 408

173. Non registration, Effect of—*Proof of actual contract of sale and possession on payment of purchase-money*—*Held* that it does not follow from the non registration within the time fixed for registration of a deed which was executed before the Registration Act came into operation that the purchaser has acquired nothing by his purchase, or that the vendor is to resume possession of the property, if it be shown that there was a contract of sale, and that in pursuance of that contract the purchaser paid the money and obtained possession. RAM SURUN DASS *v* RAM CHUND . . . 1 Agra, 283

174. ——— Non registration—*Sale of decree—Decree on mortgage bond—Registration*—

VENDOR AND PURCHASER—*continued.*

15. PURCHASERS, RIGHTS OF—*continued.*

Right to execute decree.—A decree-holder purported to sell to *A*, by private sale, all his right, title, and interest in a mortgage-decree obtained by him in a suit on a mortgage-bond against the mortgagor. The deed of sale was not registered. Afterwards, by a registered deed of sale, *A* conveyed all his right, title, and interest in the same decree to *B*. *Held* that the right to execute the decree as a mortgage-decree did not pass to *B*. KOOB LALL CHOWDHRY *v.* NITTYA NUND SINGH . I. L. R., 9 Calc., 839

S. C. HUB LAL CHOWDHRY *v.* NITTYANUND SINGH [12 C. L. R., 393

175. ——— **Assignment of indigo factory**—*Right to rent and to indigo manufactured.*—Where a plaintiff sued on the alleged purchase by him of the rights and interests of certain parties in an indigo concern, it was held that the rents collected and appropriated, and the indigo manufactured and taken away before the date of the purchase, could not form part of the stores and assets sold to the plaintiff, unless the sale of the assets, etc., had been as from some date prior to the date of purchase. CHUNDER COOMAR ROY *v.* WILKINS [10 W. R., 311

176. ——— *Assignee, Liability of, to creditor of the factory—Creditor, Rights of—Dena powna, Contract to take over.*—*A*, by deed duly registered, assigned his interest in an indigo factory to *B*. In the deed was a recital that it had been agreed that *B* should take over the dena powna account of the factory as the same stood on the 30th September 1856. *C* sued *A* and *B* jointly to recover rent in respect of lands which had been occupied under a lease from *C* with and for the use of the factory, and which was due on the 30th September 1856. *B* raised the defence that the debt was not included in a schedule, dated 30th September 1856, signed by *A*, and which he alleged had been furnished to him by *A* as containing a list of the liabilities of the factory. *Held*, if a trader or other person in this country assigns his stock in trade and effects to another, and such other person enters into a contract with the first to pay the debts of the concern, or a certain portion of such debts, the contract and assignment create a liability to the creditors in whose favour such contract is made, which they may enforce by suit; nor is the creditor bound to elect between his original debtor and the assignee, but he may join them as co-defendants in the same suit. *Held* also *per* PEACOCK, *C.J.*, and NORMAN and KEMP, *JJ.* (STEER and SETON-KARR, *JJ., dissenting*), the case must be remanded to the lower Court to try what was the agreement between *A* and *B* as to *B* taking over the dena powna account of the factory, whether the schedule was an essential part of the contract or not. KEARNES *v.* BHAWANI CHARAN MITTER

[B. L. R., Sup. Vol., 54 : W. R., F. B., 167

PHOOL KOONWAR *v.* CHARDON [6 W. R., Act X, 89

177. ——— *Liability of assignee to creditor—Bond given by former proprietor.*—When the holder of a bond from the former proprietor of an indigo factory had made no demand on it for twelve years, nor apprised the assignee of its existence as a debt due by the factory, it was held that he could not come down on the present proprietors, but must look to the obligor of the bond personally for satisfaction. HUBEEBUNISSA *v.* COX [W. R., 1864, 266

178. ——— **Right of purchaser to trees standing on land**—*Sale of land—Transfer of Property Act (IV of 1882), s. 8.*—Trees being attached to the earth are included in the legal incidents of the land and pass to the transferee under a deed of sale of the land on which they stand, unless a different intention is expressed or necessarily implied. No such intention is necessarily implied because the trees are mortgaged prior to the sale and no mention of the mortgage is made in the sale-deed. PANDURANG SHESHAGIR *v.* BHIMRAV KESHAV HIRALIKAR . . I. L. R., 22 Bom., 610

179. ——— **Right to rescind sale**—*Concealment of defect in title—Transfer of Property Act (IV of 1882), s. 55—Meaning of words "material defect in property."*—The expression "material defect in property" in s. 55 of the Transfer of Property Act (IV of 1882) includes a defect in the title to an estate. Such a defect, if concealed by the vendor, gives the purchaser the right to rescind the sale. ESSA SULLEMAN *v.* DAYABHAI PARMANANDAS . . I. L. R., 20 Bom., 522

16. SETTING ASIDE SALES.

180. ——— **Ground for setting aside sale**—*Stipulation to have mutation of names—Refusal of revenue authorities to register name of purchaser.*—Where a person purchased certain lands under a deed of sale, in which the vendor undertook to apply to the revenue authorities for the transfer of the lands to the name of the vendee, and did so, and both persons clearly understood what they were doing,—*Held* that the refusal of the revenue authorities to enter the purchaser's name in the mutation register did not constitute a ground for cancelling the sale and recovering the purchase-money. GEDEERA KOLITA *v.* DEBENDRO NARAIN KONWAR [25 W. R., 352

181. ——— *Bonâ fide purchase from guardian of Hindu widow acting collusively.*—The plaintiff was entitled, in right of her deceased husband, to the equity of redemption in a mortgaged estate. Her guardian, in collusion with the mortgagee, instituted a foreclosure suit, in which she was represented by the guardian, who submitted to a decree; and under that decree the property was sold, and the defendant became the purchaser. *Held* that, the defendant being a *bonâ fide* purchaser, the sale was not liable to be set aside. KHETERMONEE DASSEE *v.* KISHENMOHUN MITTER . . . . . . Marsh., 313

S. C. KISHEN MOHUN MITTER *v.* KHETTERMONEE DASSEE . . . . . 2 Hay, 196

17. TITLE.

182. ——— Implied contract for good title—*Suit by vendor for specific performance—Specific Relief Act (I of 1877), s 25—Title derived through will of former owner—Necessity for probate—Succession Act (X of 1865), s 187—Notice to complete contract—Rescission of contract—Clause in contract requiring vendor to hand over deeds relating to property, Construction of*—By an agreement in writing, dated the 20th June 1888, the defendant purchased a certain house in Bombay from the plaintiff for R6,000 By this agreement the plaintiff agreed that at the time of the execution of the deed of sale he would hand over to the defendant "the title-deeds, vouchers and bills,

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this time we are duly to have everything cleared." In September 1890 the plaintiff filed this suit for specific performance of the agreement. The defendant pleaded: 1st, that the plaintiff had failed to show a good title to the property; 2nd, that the plaintiff had not handed over to him all the deeds and documents relating to the property; 3rd, that he (the defendant) had lawfully rescinded the contract on the 20th August 1890 It appeared that in 1880 the then owner of the property, one *N*, had mortgaged it to one *V*, and that on the 26th October 1882 both mortgagor and mortgagee had joined in conveying it to one *C*. This deed, however, had not been registered and was consequently inadmissible in evidence, and was rejected at the hearing *C* had, however, after his purchase taken possession of the property and had held it until 1885 On the 6th May 1885 he sold it to *H* Prior to his sale, *viz*, in 1883, *N* had died, and left a will appointing *V* his executor, but no probate of this will had ever been obtained. In the sale deed, however, to *H* of the 6th May 1885 *V* had joined as a conveying party both in his own right and as executor of *N*. On the 29th September 1887 *H* sold the property to the plaintiff, who, as already mentioned, sold it to the defendant on the 20th June 1888. *Held* that the plaintiff was bound to give the defendant a good title, or, in other words, a title free from reasonable doubt (s. 25 of the Specific Relief Act I of 1877) In the absence of a contract providing that the plaintiff should show only such title as he could give, or of some other special contract as to title, the general law laid down in s. 25 of the Specific Relief Act I of 1877 must prevail *Held* further, dismissing the suit, that the title shown by the plaintiff was not a good title. The conveyance of the 26th October 1882 by the mortgagor and mortgagee to *C* not being registered was not admissible, and could not be referred to, so that it was necessary to regard *N* as still the mortgagor and *V* as still the mortgagee of the property, while C had, in some capacity or other, the actual possession. That being the state of things, *N* died in 1883, and it was alleged that he had left a will appointing *V* his executor, but no probate of that will had been obtained. The equity of redemption remaining in

17. TITLE—*concluded*

N as mortgagor passed on his death to his executor *V*. On the 6th May 1885 *C* sold the property to *H* (the plaintiff's predecessor), and *V* joined in the deed of conveyance as executor of *N*. But it was necessary for the plaintiff to show not merely that he joined as executor, but that he had a right, as executor, to convey to *H* the equity of redemption which had come to him from *N* By s. 187 of the Succession Act (X of 1865) the only mode of doing this was by the probate of *N*'s will, and this had not been obtained. If an heir of *N* sued for redemption, the defendant would have no defence, unless he could prove that he had acquired the equity of redemption For this purpose, by s. 187 of the Succession Act (X of 1865) probate would be necessary, and he would consequently be obliged to prove the will and pay duty upon all the property included in it. That would be a liability which the Court could not impose upon a defendant resisting specific performance of a contract like the one made by the plaintiff Where a vendee ascertained that the title of property sold to him was derived through the will of a former owner which had not been proved,—*Quære*—Whether a notice given by him (the vendee) to the vendor to produce the will and give satisfactory proof, its being the last will of the said owner within four days was a reasonable notice so as to entitle the vendee afterwards to rescind the contract. A contract of sale provided as follows for the handing of the title-deeds of the property to the purchasers "And at the time of the execution of the deed of sale you" (*i.e*, the vendor) "are duly to give us, the purchasers, the title-deeds, vouchers, and bills whatever there may be relating to the said property" *Held* that this clause meant that whatever documents of title were necessary under the terms of the contract, or under the general law, should be handed over by the vendor to the vendee at the execution of the deed of sale. MAHOMED MITHA *v* MUSAJI ESAJI . . I. L. R., 15 Bom., 657

18 VENDOR, RIGHTS AND LIABILITIES OF

183. — Unpaid vendor—*Refusal to*

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the purchase-money out of the usufruct. PREM SOONDUREE DOSSIA *v* GRISH CHUNDER BHUTTACHARJEE . . . . 10 W. R., 104

184. — *Failure to pay whole of consideration money*—When a vendor of land is not paid a portion of the consideration money, he cannot wholly disaffirm the contract, but he can establish his lien on the land as an unpaid vendor MOHSUM ALLY *v*. BALASOO KOER . 2 Hay, 570

185. — — — — *Vendor's lien for unpaid purchase-money*—In a suit claiming possession of land purchased by the plaintiff from the defendant, the Munsif threw out the claim for want

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

of consideration; but the District Judge found that the plaintiff was entitled to have the land, and that the defendant might sue for the purchase-money. *Held* that the equitable doctrine of the vendor's lien for unpaid purchase-money applied to the case, but as the District Judge had not decided whether the defendant had succeeded in proving that the purchase-money had not been paid, the suit should be remanded for a finding by him on that issue. YELLAPPA BIN BISAPPA *v.* MANTAPPA BIN BASAPPA [3 Bom., A. C., 102

186. ——— *Contract to sell land—Rescission—Re-sale by registered deed.*—*A* sued to recover certain land which he claimed under a registered deed of sale executed by the owner. Prior to the date of this sale to *A*, *M* had been put in possession of the land under an agreement to purchase the land for R300. The sale-deed to *M* had not been executed because only R200 of the purchase money had been paid to the owner. *Held* that *A* could not recover, as it was not open to his vendor to rescind the contract with *M*. MOIDIN *v.* AVARAN . . . I. L. R., 11 Mad., 263

187. ——— *Failure to pay portion of purchase-money.*—The vendees of certain land, a portion of which only was in their possession by virtue of the sale, the rest being in the possession of mortgagees, sued for a declaration of their right to such land, and to have a sale of a portion of such land, made after it had been sold to them, set aside. *Held* that, inasmuch as the sale to them had taken effect, they were entitled, notwithstanding the whole of the purchase-money might not have been paid, to a decree as claimed, and the vendors, if they had any claim in respect of the purchase-money, should be left to seek their remedy. KESRI *v.* GANGA PRASAD . . I. L. R., 4 All., 168

188. ——— *Stoppage in transitu—Lien of unpaid vendors—Agents for purchase of goods—Insolvency—Right of carriers.*—A firm at Cawnpore sent an agent to Sarun, plaintiff's residence, to effect purchases in cotton, and the plaintiff, at the instance of the person so deputed, made purchases and supplied funds, both for purchase and for their carriage and insurance, the agent doing nothing but consenting to the arrangements and giving hundis on his employer's correspondents in payment. The goods were despatched and insured, but before reaching their destination the firm became insolvent, and the plaintiff proceeded to take possession of them, but was prevented on account of the goods being previously attached by the defendant, a judgment-creditor. It was held on plaintiff's suit that the plaintiff was an unpaid vendor, and had a lien on the goods for the price, and might detain the goods till he received or was satisfied about the payment for the said goods, a completed contract for the sale of the goods notwithstanding. An unpaid vendor, in case of the vendee's insolvency, may stop the goods sold *in transitu*. Agents for the purchase of goods have a lien on the goods when purchased for the moneys paid and liabilities incurred by them in respect to such purchase, and are not bound to deliver the goods until they are reimbursed or secured for such advances and liabilities, and an agent in this character is in the position of an unpaid vendor. Where the vendor is not otherwise paid than by having received the insolvent's acceptance, he may, in the event of the purchaser's insolvency, stop the goods, though he have negotiated the bills, and they are still outstanding and not yet at maturity. Whilst the goods sold remain in the hands of the carrier employed to convey them to their original destination, as between buyer and seller, no case of constructive possession arises, unless when the carrier enters expressly into some new agreement, distinct from the original contract for carriage. So also the mere acts of making or sampling the goods, or giving notice to the carrier to hold the goods for the buyer, though done with intention to take possession, do not establish a constructive possession, or affect the right to stop *in transitu*. Where the right of stoppage *in transitu* vests in the consignor, it cannot be defeated by the claims of other creditors of the consignee, the unpaid vendor having an elder and preferential lien. BHOLANATH *v.* BAIJ NATH . . . . . . 2 Agra, 11

189. ——— *Stoppage in transitu—Railway receipts—Effect of endorsing railway receipts — Title of endorsee of such receipts—Contract Act (IX of 1872), s. 103.*—The firm of *C D* carried on business in Bombay. *A*, the agent of the firm, bought from the first defendant *H* at Bijapur a quantity of wheat which at *A*'s request was on the 28th and 29th May 1889 consigned by *H* to the firm of *C D* at Bombay, on the understanding that the consignees were not to have the wheat until they had paid the hundis drawn in respect of it. The wheat was sent to Bombay on the 28th and 29th May 1889, in three consignments, *viz.*, of 56, 104, and 181 bags respectively, and two hundis for R1,000 and R1,500 respectively payable at sight were drawn by *A* in Bijapur on the firm of *C D* in Bombay, and were given by him to *H*, who thereupon handed to *A* the three railway recipts for the three consignments which had been despatched by the first defendant's agent at Bijapur railway station. The hundis were sent by *H* to his agent in Bombay for collection. The hundi for R1,000 arrived in Bombay on the 31st May, and was paid on the 1st June. The hundi for R1,500 arrived in Bombay on the 1st June, and was dishonoured on the 2nd June by the firm of *C D*, which afterwards stopped payment and became insolvent. The railway receipts given by *H* to *A* at Bijapur were in the following form: "Received from *H* the undermentioned goods, 181 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment, or this railway receipt, is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued*

thereof, each order must bear a stamp. I (we) hereby certify that I (we) am (are) aware that the Southern Mahratta Railway has received the abovementioned goods subject to the conditions noted on the back.

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to the second defendant *V* to secure an advance of R2,000. The endorsement was as follows: "Signature of *C D*. I have sold the delivery, as *per* this receipt, to *V*. The handwriting of *C*." Two consignments (*viz.*, 56 bags and 104 bags) and part of the third (*viz.*, 73 bags out of 181) had arrived in Bombay by the 2nd June in bags bearing *C D*'s marks. On that day *V* applied to the Railway Company for delivery, and paid full freight on all three consignments. He was allowed to remove the 55 bags and the 104 bags. After having done this, he loaded his carts with the 73 bags, which had then arrived, out of the consignment of 181 bags without any objection on the part of the Railway Company, but he was not allowed to take them out of the station

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of a telegram sent by *H* from Bijapur, on hearing of the dishonour of the hundi for R1,500, directing that the 181 bags should not be delivered. At the trial the Judge found that this telegram had probably been received before all of the 73 bags had been loaded into the carts. *Held* (1) that there was no such delivery of the 181 bags to *C D*'s agent at Bijapur as to deprive *H* of his right of stoppage *in transitu*. (2) That there was such a delivery of the 73 bags at the railway station to *V* as to deter-

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until the carts had been loaded that the Company's servants interfered to prevent their leaving the station yard. Before that time the freight for the 73 bags had been paid by *V* and the railway receipt had been given up to the Company duly signed by *V*'s servant. Everything had been done on the part of the Company to divest themselves of their lien as carriers; for the mere fact that the carts were still standing in the goods compound of the railway station after the bags had been placed on them could not affect the question, there being no suggestion that the matter as between the Company and *V* had not been completely settled. (3) That

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within the meaning of the said section. GREAT INDIAN PENINSULA RAILWAY CO. *v.* HANMANDAS RAMKISON . . . I. L. R., 14 Bom., 57

VENDOR AND PURCHASER—*continued*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued*

190. ——— ——— ——— *Sale of immoveable property—Non payment of purchase money—Vendor's remedy.*—A vendor of immoveable property who has given possession to the purchaser is not entitled to rescind the contract of sale and recover possession because the purchase-money is not paid. His remedy is to sue for the sum due, and he has a lien on the property for the amount. TRIMALRAY RAGHAVENDRA *v.* MUNICIPAL COMMISSIONERS OF HUBLI . . . I. L. R., 3 Bom., 172

191. ——— *Non payment of purchase money. Suit for possession by vendor who has not paid the purchase-money—Remedy of vendor.*—The plaintiffs owned land on which the defendant, with the plaintiff's leave, built a house. Disputes arose between plaintiffs and defendant, and in February 1893 the defendant obtained an order from the Mamlatdar in a possessory suit against the plaintiffs directing the plaintiffs to give up possession of the property to him. In August 1893 an agreement was made between them, in pursuance of which the defendant executed a rent-note to the plaintiffs promising to give up the property to the plaintiffs at the end of four months on payment by the plaintiffs of R100. On the 25th November 1893 the plaintiffs brought this suit for possession, alleging that the defendant refused to give up the property. The District Judge dismissed the suit, finding that the plaintiffs had not paid the R100, and holding that the defendant was therefore justified in putting an end to the contract contained in the rent-note. *Held* (reversing the decree) that the evidence showed the transaction to be a sale of the property by the defendant to the plaintiff for R100, possession being given to the plaintiff under the lease for four months; that the sale was a completed transaction, although the R100 had not been paid, and that the only remedy of the defendant was to sue for the amount. SAKARAM *v.* NAMDEV . . . I. L. R., 23 Bom., 525

192. ——— *Purchase money. Suit by vendor to recover—Non registration of bonds given for purchase money of land.*—The defendants purchased land from the plaintiff, and gave bonds for the purchase-money. These bonds were not registered, and were therefore not admissible in evidence. *Held* that the plaintiff, as vendor, was under no necessity to rely on the bonds in order to establish a charge on the property sold in respect of the unpaid purchase money. Unpaid purchase-money is a charge on the property in the hands of the vendee, and the claim to enforce it falls under art. 132, sch. II of the Limitation Act. VIRCHAND LALCHAND *v.* KUMAJI . . . I. L. R., 18 Bom., 48

193. ——— ——— ——— *Transfer of Property Act (IV of 1882), s. 55—Implied covenant for title—Acts amounting to waiver of covenant—Possession taken under contract—Right to recover unpaid purchase-money—Lien.*—On 14th August 1885 the defendant, having agreed to purchase a house belonging to the plaintiff, executed an agreement, in which it was stated "that he had the

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*continued.*

day purchased the house belonging to Ghousiah Begum Sahiba (plaintiff) for R16,000, that he had paid R1,000 as an advance and taken possession, that he would pay the balance with interest at the rate of R1 per cent. per mensem within fifteen days, and obtain a sale-deed from the said Begum." The plaintiff at the time of the agreement had not obtained a conveyance of the house to her, and was not able to tender a conveyance to the defendant until January 1887, when she did so. Meanwhile the defendant took possession under the agreement, paying only a portion of the balance of the purchase-money; he also executed certain repairs to the house, and let it to a tenant and enjoyed the rent. It further appeared that shortly after the above agreement he sought to obtain a sale-deed from the plaintiff and attempted to raise a sum of money on a mortgage of the house. On 22nd December 1885 the defendant wrote to the plaintiff demanding a conveyance and giving notice that, if the sale be not completed in the following month, the interest on the balance of the purchase-money should cease; but no evidence was given as to any appropriation of the purchase-money by the defendant. In 1887 the plaintiff filed the present suit to recover the unpaid purchase-money with interest at 12 per cent. *Held* that the acts of the defendant amounted to a waiver of the implied covenant for title, and that the plaintiff was entitled to recover the unpaid purchase-money with interest at the agreed rate up to the date of payment, and that he was further entitled to a lien on the property for that amount. GHOUSIAH BEGUM *v.* RUSTAMJAH

[I. L. R., 13 Mad., 158

194. ———— *Lien—Creditor of vendor, Right of, to lien—Mortgage.*—Although an unpaid vendor holds a lien upon property sold for the consideration-money, yet a creditor of that vendor cannot claim the same right. HARI RAM *v.* DENAPUT SINGH

[I. L. R., 9 Calc., 167 : 11 C. L. R., 339

195. ———— **Conditions of sale**—*Sale by Government—Auction-sale of confiscated property—Ground for setting aside sale.*—Where it was made a distinct condition of sale that the property should be sold to the highest bidder, without any restriction of the purchaser being a rebel or not, —*Held* that the Government may, like any other seller, impose any condition it pleases in reference to the property which it offers for sale, prior to sale, but is not at liberty subsequently to the sale to disaffirm or annul it on a ground not only novel but directly at variance with the terms on which it offered the property for sale. SEVA LALL *v.* MAHOMED . . . . 2 Agra, 160

196. ———— **Vendor keeping vendee out of possession**—*Suit for partition—Trustee—Mesne profits.*—Where, in a suit for partition, it appeared that the vendor of the portion sued for had kept the vendee out of possession, the vendor, though liable for mesne profits, was not in the position of trustee of the rents for the party kept out of possession. NILKAMAL LAHURI *v.* GUNOMANI DEBI

[7 B. L. R., P. C., 113 : 15 W. R., P. C., 38

VENDOR AND PURCHASER—*continued.*

18. VENDOR, RIGHTS AND LIABILITIES OF—*concluded.*

19. MISCELLANEOUS CASES.

197. ———— **Deed of sale, Proof of**—*Suit for possession under deed of sale—Delivery of deed of sale.*—In a suit for possession of land on the ground of title under a kobala, it is not enough for the plaintiff to prove the writing and signature of the kobala; he must also prove that it was delivered as a complete instrument. OMED ALI *v* NIDHEERAM . . . . . . 22 W. R., 367

198. ———— **Fictitious sale**—*Mortgage—Suit by purchaser for confirmation of possession—Issues.*—Where a sale by *A* to the plaintiff had taken place shortly before a mortgage of the same property by *A* to the defendant, the defendant is entitled to have raised, in a suit brought for confirmation of possession and to declare the sale valid, an issue whether the sale was *bonâ fide* and for consideration, and whether possession passed under it to the plaintiff. The proper issue is not whether the deed of sale was genuine or not. GARBHU BHAGAT *v.* RUNGLAL SING . . 7 B. L. R., Ap., 33

199. ———— **Owner standing by and seeing property sold**—*Right to have sale set aside.*—The rule that one who, knowing his own title, stands by and encourages a purchase of property as another's, will not be allowed to dispute the validity of the sale, implies a wilful misleading of the purchaser by some breach of duty on the owner's part. In this case there was nothing more than mere quiescence. BASWANTAPA SHIDAPA *v.* RANU

[I. L. R., 9 Bom., 86

200. ———— **Purchaser from husband**—*Acquiescence of wife—Suit to set aside purchase as being wife's property.*—Where a husband was alleged to have given a share in some property to his wife, and the husband subsequently sold the whole property to another party, and put the said party in possession, without any objection from the wife, who for years behaved as though she had no interest in the property other than that arising from her husband's possession of it in his own right,—*Held* that a person afterwards claiming to have purchased the wife's share, and seeking to be put in possession, could not displace the *bonâ fide* purchaser from the husband, for a person in the position of the wife in this case, who chooses to stand by for years not asserting her rights, but allowing another to deal with her property as his own, has no equity to come into Court and eject any one who has purchased in ignorance of her title. SOOJAT MAHOMED *v.* MAHOMED TORAB . . . . 25 W. R., 281

201. ———— **Grant of estate when having bad title**—*Vendor afterwards obtaining good title—Specific Relief Act (I of 1877), s. 18.*—*A*, holding a certain mehal as a ghatwal, mortgaged it

VENDOR AND PURCHASER—*continued*

19 MISCELLANEOUS CASES—*continued*

to *B* by way of a zur-i peshgi lease for twenty one years. Shortly after the granting of the lease, the zamindar got a decree against *A*, by which *A*'s ghatwali right was extinguished. In execution of that decree, the zamindar ousted and took khas possession of the mehal Some years afterwards, the zamindar granted to *A* a perpetual mokurari lease of the same mehal *Held* in a suit against *A* instituted by the assignee of *B*'s rights in the zur-i-peshgi, that under s. 18, Act I of 1877, *A* must, out of his present estate in the mehal, make good the zur-i peshgi LOOT NARAIN SINGH *v* SHOWKEE LAL . . . . 2 C. L. R., 382

[illegible]

for certain [illegible] of land for his [illegible] subsequently [illegible] co-sharer to [illegible] —*Held* tha[illegible] the consider[illegible] on the pre-emptor, who could [illegible] bargain made with him on more favourable terms than those offered by the stranger and accepted by the vendor, the fact that he was no party personally to the agreement notwithstanding. KHAIR SINGH *v* HEERA DASS . . . 1 Agra, 75

203. [illegible]

—*Sale* [illegible] *session* [illegible] —*Loss* [illegible] tiff and the secon[illegible] worked a cotton press in partnership. In August [illegible] to *V* (the first [illegible]

defendant to that suit. The plaintiff [illegible] R35,000 was much too low a price for the press, and he objected to the sale. He prayed that *V* might be restrained from continuing in possession of the press and working it, and that a receiver might be appointed to take possession of it until further orders. On the 21st April 1885, on a motion, the Court refused to grant an injunction and receiver, but ordered *V* to pay R30,000 (*i e*, the balance of the purchase-money) to the solicitors of the parties of investment until the hearing of the suit, and directed that, if that sum was not paid by the 21st May 1885, a receiver should be appointed to take possession of the press. The suit (*i e*, No. 327 of 1884) was heard on the 15th February 1887, when it was held by the Court that the sale by *A* to *V* was without authority; that the defendant *V* took nothing under it, and that the plaintiff was entitled to have it set aside Certain matters still remained to be decided; but on the 25th February 1887 the decree in the suit was made, giving effect to the findings already arrived at on the 15th February. The decree by consent directed various accounts to be taken, and, among others, an account of the profits realized by the working of the press by the defendant *V* since his possession thereof, credit being given to him for all sums expended by him in the repairs, maintenance, and working of the said press and for t[illegible] thereof by him The decree further [illegible] *A*" Th[illegible] intention [illegible] to the press [illegible] to appeal In May 1887 the plaintiff filed the present suit, claiming to recover R50,000 from the defendant *V* as the value of the press, or such further sum as might be necessary to rebuild and restore it He alleged that the fire was caused by the working of the press, and contended that the working of the press by the defendant *V* after the decree of the 25th February was an act of trespass by him and that therefore, independently of the question whether the fire was caused by the negligence of *V* and his servants, the said *V* was liable for the loss occasioned by the fire *Held* that, independently of negligence, the defendant *V* was not liable to the plaintiff for the loss occasioned by the fire. *Down to the decree of the 25th February 1887 the defendant in keeping possession of the press and working it was, no doubt, a trespasser, but subsequently to that decree he remained in possession and worked the press with the consent of the plaintiff.* The maxim *volenti non fit injuria* applied to the circumstances of the case *Held* also that, no negligence having been proved against the defendant, the suit must be dismissed. JAMSETJI RUSTOMJI BAHADURJI *v* IBRAHIM VADINA

[I. L. R., 13 Bom., 183

204. ——— **Right of pre-emption**—*Option of getting estate re-transferred—Mortgage.*—In July 1870 *R*, the owner of a share of a village, executed in favour of *M* an instrument whereby he transferred by sale the share to *M* absolutely In November 1870 *M* agreed to re-transfer the share to *R*, if *R* desired, at any time within thirteen years, to repurchase it, on payment of the sum which *M* had paid for it. During the term mentioned in the agreement of November 1870, *R* not having taken advantage of the agreement, *M* sued, as owner of the share, to enforce the right of pre-emption in respect of the sale of another share of the village *Held* that *M* having become, under the transfer of July 1870, the out-and-out proprietor of the share, until *R* availed himself of the option given him by the agreement of

VENDOR AND PURCHASER—*concluded.*

19. MISCELLANEOUS CASES—*concluded.*

November 1870, the full estate of an owner, carrying with it the right of pre-emption, vested in *M*, and it was competent for him to enforce such right by suit. *Ramsaran Lal* v. *Amirta Kuar, I. L. R., 3 All., 369,* distinguished. BHAJAN *v.* MUSHTAK AHMAD [I. L. R., 5 All., 324

205. ——— *Condition against alienation.*—The co-sharers of a certain estate sold it to *R*. On the same day as the vendors executed the conveyance of such estate to *R* the latter executed an instrument whereby he agreed that the vendors might redeem such estate or any portion thereof, within a certain term, on repayment of the purchase money or a proportionate share thereof, and in such case the sale would be considered cancelled: provided that the vendors paid the money out of their own pockets and did not raise it by a transfer of the property, and not otherwise. The heir of one of the vendors sold his share of such estate to *A*, and *A* sued *R* to redeem such share. *Held* by the Full Bench (STUART, *C.J.*, doubting) that the nature of the transaction between *R* and his vendors must be determined by looking at both the conveyance and the agreement, and, both those documents being regarded, the transaction between them was one of mortgage, and the vendors had a right of redemption, and the proviso in the agreement was inequitable and incapable of enforcement against them or their representatives in title. *Held* also by PEARSON, *J.*, that the agreement was not of the nature of a personal contract enforceable only by the original vendors, and not by their representatives; that, assuming that a transfer of the property was prohibited by the agreement, *R* could not, as implied by the Full Bench ruling in *Dookhchore Rai* v. *Hidayut-oollah, Agra, F. B., Ed. 1874*, 5, treat as a nullity the sale which had been made to *A*, and *A*'s right to redeem could not be reasonably denied and resisted; and that a transfer was not positively, but only implicitly, prohibited by the agreement, *R* merely declaring that he would not recognize the transferees as having acquired the equity of redemption or cancel his own sale-deed, and such a declaration was beyond his competence and had no legal effect. RAM SARAN LAL *v.* AMIRTA KUAR . . . . I. L. R., 3 All., 369

206. ——— *Specific Relief Act (I of 1877), s. 18 (a)—Transfer of Property Act (IV of 1882), s. 43.*—A member of an undivided Hindu family consisting of himself, his adoptive son, and his uncle, sold certain land belonging to the family to the plaintiff. In a suit by the plaintiff for a declaration of his title to, and for possession of, the land, it appeared that the sale was not justified by any circumstances of family necessity; and an objection that was taken to the adoption was overruled and the adoption held to be valid. During the pendency of the suit the undivided uncle died, having made a gift of his property to his daughter-in-law, which gift was held to be invalid. *Held* that, under s. 16 (*a*) of the Specific Relief Act, together with s. 43 of the Transfer of Property Act, the plaintiff was entitled to a moiety of the land sold to him. VIRAYYA *v.* HANUMANTA I. L. R., 14 Mad., 459

VERBAL CONTRACT.

See LIMITATION ACT, 1877, ART. 75. [I. L. R., 3 Calc., 619

VERDICT OF JURY.

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See CRIMINAL PROCEEDINGS. [I. L. R., 20 Mad., 445

See EVIDENCE—CRIMINAL CASES—CONSIDERATION OF, AND MODE OF DEALING WITH, EVIDENCE. [I. L. R., 13 Mad., 426

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See CASES UNDER REVISION—CRIMINAL CASES—VERDICT OF JURY AND MISDIRECTION.

1. GENERAL CASES.

1. ——— **Verdict of majority**—*Want o independent opinion.*—The law requires a juryman to exercise his own understanding on the case submitted to him, and to decide on evidence and not to follow blindly the opinion of his fellows. Where one out of three (in a jury of five) depends on the inspection and inquiries of the other two, the verdict of the three is not that of a legal majority. PETAMBUR JUGI *v.* NASARUDDY . 25 W. R., Cr., 4

2. ——— **Ground for refusing to accept verdict**—*Verdict based on voluntary confessions.*—Wherever trial by jury exists, the verdict of the jury must be accepted, unless it is manifestly and certainly wrong. A verdict based on voluntary confessions is just as good as a verdict based on the testimony of credible witnesses. It is the province of a jury to decide as to the credibility of witnesses. QUEEN *v.* WUZIR MUNDUL . 25 W. R., Cr., 25

3. ——— **Unanimous verdict**—*Further consideration of case by jury—Dissent by Judge from unanimous verdict—Procedure.*—It is only in a case where the jury are not unanimous that a Court may require them to retire for further consideration. Where a verdict is unanimous, it must be received by the Judge, unless contrary to law Where a Judge dissents from the unanimous finding of a jury given in accordance with the law, the only procedure open to him to follow is that laid down in

VERDICT OF JURY—*continued*

1 GENERAL CASES—*continued*

the fifth clause of s 263 of the Code of Criminal Procedure. GOVERNMENT OF BENGAL v. MAHADDI I. L. R., 5 Calc , 871

S C EMPRESS v MAHUDDI 6 C. L. R., 349

4 —— Dissent from verdict—*Criminal Procedure Code, 1872, s 263, cl. 4*—The "dissent" referred to in the 4th clause of s. 263 of the Criminal Procedure Code (Act X of 1872) must be such a complete dissent as to lead the Judge to consider *it necessary for the ends of justice to submit* the case to the High Court. EMPRESS v BHAWANI . . I. L. R., 2 Bom , 525

5 *Reference to High*

Court under ss. 263 and 164 of the Criminal Procedure Code, 1872, when he disagrees with a verdict of acquittal, to state the offence which, in his opinion, has been committed EMPRESS v SAHAB RAE [I. L. R., 3 Calc , 623 : 2 C. L. R , 304

has given QUEEN v MEAJAN SHEIKH [20 W R., Cr , 50

7 —— —— *Questions as to grounds for verdict—Power of Sessions Judge*— (MARKBY, J ... een v Wazir ... far PRINSEP ... oes not prevent a Sessions Judge from asking a jury regarding the grounds for their verdict, and such a course is desirable in the ends of justice See *Queen v Sustiram Mundal, 21 W. R , Cr , 1* EMPRESS v MUKHUN KUMAR 1 C L. R , 275

8. — —— —— *Ambiguity in verdict—Criminal Procedure Code, 1872 s 263*—Under s. 263 of the Code of Criminal Procedure, 1872, a Court was authorized to ask the jury such questions as were necessary to ascertain what their verdict really is but where the verdict, although perhaps erroneous, is not ambiguous, it is the duty of the Judge to record it without further question IN THE MATTER OF DHUNUM KAZEE EMPRESS v DHUNUM KAZEE [I. L R , 9 Calc , 53 : 11 C L. R., 169

9 —— *Criminal Procedure Code, 1882, s 303*—Although s. 303 of the Criminal Procedure Code empowers a Judge to ask the jury such questions as are necessary to ascertain what their verdict is, it was never contemplated that, on ascertaining that the jury are not unanimous the Judge should make minute inquiries to learn the nature of the majority and its opinion, so that he should have the opportunity of accepting or refusing that opinion as a verdict according as it coincides with his own opinion or not. Whatever may be the opinion of the Judge, if he goes so far as

VERDICT OF JURY—*continued*

1 GENERAL CASES—*continued*

... what ... receive ... s from ... uery ... [I. L. R., 10 Calc., 140 : 13 C. L R., 358

10 — — *Criminal Procedure Code, 1872 s 263*—In a case in which the accused was tried on charges of murder, culpable homicide, and causing grievous hurt, the jury acquitted him of murder, but convicted him on the other counts. This verdict was recorded by the Sessions Judge, who then in accordance with s. 263, Criminal Procedure Code, 1872, questioned the jury as to the grounds for their verdict and the jury eventually intimated their willingness to convict of murder. The Sessions Judge differed from the first verdict of the jury, but as he had recorded that verdict, he doubted whether he could accept the second verdict, and referred the case to the High Court under s 263 *Held* that s. 263 did not apply to such a case as this. There could be no verdict delivered and no verdict finally recorded until the last of the questions put by the Judge to the jury was answered; and as it appeared from the answers of the jury that their findings of facts disclosed that the verdict ought to have been one of guilty on the charge of murder, the Judge should have entered the verdict of the jury as one of guilty of murder The case was accordingly returned to the Judge to enable him to do that and to pass such sentence as the law directed It is only when it is necessary, in order to ascertain what the verdict of a jury really is, that a Judge is justified under s 263 in putting questions to the jury QUEEN v SUSTIRAM MANDAL . 21 W R., Cr , 1

11. *Special verdict*—*Question put by Judge to jury after special verdict—Penal Code s 330*—The prisoners were tried under s. 330 of the Penal Code (for voluntarily causing hurt to a girl), and under s. 348 (for wrongfully confining her) Circumstances of aggravation were alleged, as lifting up and using a sword, of *lowering the girl into a well and of pricking her* with thorns. The jury in their verdict stated that they disbelieved these allegations, and also the charge of illegal confinement, but that they believed that some slaps had been given. The Judge then asked the jury whether they convicted on either, and if so, which head of charge They answered that they believed the prisoners had beaten the girl and they convicted them under s. 330 *Held* that the question put by the Judge to the jury was a proper one, and not one of law The conviction upheld Such a case is not governed by the rules of English law as to special verdicts. QUEEN v HARI PROSAD GANGOOLY 8 B. L. R., 537 : 14 W. R., Cr., 59

12 Special verdict—*Criminal Procedure Code (1882), ss 235 and 303—Duty of Sessions Judge*—The accused was tried for rape. The jury, after considering their verdict, announced through their foreman that the accused "did the

VERDICT OF JURY—*continued*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

in the High Court under s. 263 of Act X of 1872, the Court will adhere generally to the principle of the Courts in England, *viz.*, that the Court will not . . . the verdict of a jury unless it be perverse . . . the . . . ed to . . . t the . . . r the learned Judge . . . t dis satisfied with the verdict, or whether he would have come to the same conclusion as the jury, but whether the verdict was such as reasonable men ought to have come to. IN THE MATTER OF DHUNUM KAZEE. EMPRESS *v.* DHUNUM KAZEE [I. L. R., 9 Calc., 53 : 11 C. L. R., 169

20. ——— *Exercise of powers of High Court—Criminal Procedure Code, 1872, s. 263.*—The Court should exercise the powers vested in it by s. 263 of the Criminal Procedure Code (X of 1872) only when it finds the verdict of the jury clearly and patently wrong, and only set such verdict aside, even if the Sessions Judge disagrees with it, when it is found unsustainable by the evidence. QUEEN *v.* SHAM BAGDI [13 B. L. R., Ap., 19 : 20 W. R., Cr., 73

QUEEN *v.* NOBIN CHUNDER BANERJEE [13 B. L. R., Ap., 20 : 20 W. R., Cr., 70

QUEEN *v.* ITWARYA 14 B. L. R., Ap., 1

QUEEN *v.* HURRO MANJI . 14 B. L. R., Ap., 1 [14 B. L. R., Ap., 2 note : 21 W. R., Cr., 4

21. ——— *Inconsistencies in evidence otherwise sufficient for conviction—Criminal Procedure Code, 1872, s. 263.*—Where there are reasons sufficient to warrant a jury in disbelieving the witnesses and in giving the prisoner the benefit of the doubt raised by inconsistencies in that evidence, although another jury might have come to a different conclusion, the High Court will not interfere. It must be shown that the verdict of the jury is certainly unreasonable and perverse. *Queen v. Sham Bagdi, 13 B. L. R., Ap., 19 : 20 W. R., 73,* cited and followed. IN THE MATTER OF HURREE NARAIN MOOKERJEA . . 3 C. L. R., 518

22. ——— Exercise of power of interference—*Ground for setting aside verdict—Verdict contrary to Judge's charge to jury.*—Where a . . . a prisoner contrary to the charge of . . .

. . . 45

Contra, QUEEN *v.* . . . [18 W. R., Cr., 40

23. ——— *Omission to sum up properly—Ground for setting aside verdict—* . . . Judge to sum up the case pro . . . be laid down as to which . . . a defective summing up, but in general, if the finding of the jury in such a case is one that an Appeal Court would set aside if the trial had taken place with assessors, the Court will interfere and set the verdict aside. REG. *v.* FATTECHAND VASTACHAND [5 Bom., Cr., 85

24. ——— *Criminal Procedure Code, 1872, s. 263—Ground for setting aside* . . .—The High Court set aside . . . se the Judge . . . point out the . . . case of the . . . he jury to at . . . ments or ex . . . nation of certain documents. QUEEN *v.* . . . OVIND PAIR [23 W. R., Cr., 21

25. ——— *Inconsistent* . . . *of—Verdict of guilty.*—Where a jury found a . . . con- . . . as of . . . Judge . . . Judge ought to have explained to the jury . . . testimony of eye witnesses was not necessary to the establishment of a charge of murder, and that the jury, if they had no doubt of the guilt of the accused, were bound to give effect to the conclusion at which they had arrived. QUEEN *v.* GOKOOL KAHAR [25 W. R., Cr., 36

26. ——— *Criminal Procedure Code, 1872, s. 263—Discretion of Court—Setting aside verdict of acquittal of murder.*—A very large discretionary power is vested in the High Court by s. 263 of the Code of Criminal Procedure. No fixed rules can be laid down for the exercise of that discretion in every instance, and the decision in each case submitted must depend upon its own peculiar circumstances. In this case the Court set aside a verdict of acquittal of murder. EMPRESS *v.* MUKHUN KUMAR . 1 C. L. R., 275

27. ——— *Judge disagreeing with verdict—Criminal Procedure Code, 1872, s. 263—Ground for setting aside verdict.*—On a trial by jury before a Sessions Judge, the jury returned a verdict of guilty. The Judge disagreed with the verdict, and submitted the case to the High Court. *Held* that the High Court had power to set aside the verdict of the jury, and to direct an acquittal. S. 263 of the Criminal Procedure Code (Act X of 1872) explained. QUEEN *v.* KOOMO . . . [11 B. L. R., 14 : 20 W. R., Cr., 1

28. ——— *Judge differing from verdict—Acquittal by majority of jury—Criminal Procedure Code, 1872, s. 263.*—Where a

VERDICT OF JURY—*continued.*

2. POWER TO INTERFERE WITH VERDICTS —*continued.*

jury are not unanimous in their finding, and the Judge dissents from the opinions expressed by them, on the case being referred, under s. 263 of Act X of 1872, the High Court is competent to find the prisoner guilty, notwithstanding an acquittal by the majority of the jury. EMPRESS *v.* SAHAE RAI

[I. L. R., 3 Calc., 623 : 2 C. L. R., 304

29. ———— *Criminal Procedure Code, 1872, s. 263—Verdict of acquittal—Power to reverse verdict of acquittal.*—Where the jury acquitted the prisoners on the charges framed, but found certain facts which amounted to another offence, and omitted to convict the prisoners of that offence, as provided by s. 457 of the Criminal Procedure Code, —*Held* that the High Court could, on the case coming before them under s. 263 of the Criminal Procedure Code, find the prisoners guilty of such offence. EMPRESS *v.* HARAI MIRDHA

[I. L. R., 3 Calc., 189

30. ———— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury.*—The High Court, acting under s. 263 of the Criminal Procedure Code, 1872, convicted the accused in this case on the facts, notwithstanding the verdict of acquittal come to by the jury. QUEEN *v.* SIDHAM SIRCAR

[20 W. R., Cr., 16

31. ———— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury—Confession—Evidence Act, s. 29.*—The Court on a consideration of the evidence set aside the verdict of acquittal come to by a majority of the jury, holding that a confession made by the accused before the Assistant Magistrate was good, such confession, even if obtained by deception, being admissible under s. 29 of the Evidence Act, 1872. QUEEN *v.* RAM CHURN GHOSE . . 20 W. R., Cr., 33

32. ———— *Criminal Procedure Code, 1872, s. 263—Acquittal by jury.*—The prisoner, who was charged with having committed murder, was found by the jury who tried him to have been of unsound mind at the time he committed the offence. The Sessions Judge, differing on that point from the jury, referred the case to the High Court under s. 263 of the Code of Criminal Procedure. *Held* that in a case of this kind the High Court will not interfere without the very clearest proof that the jury were mistaken, and that the interests of justice imperatively required the Court to take action under the extraordinary powers conferred upon it by s. 263, Code of Criminal Procedure. On a consideration of the medical evidence, the Court declined to interfere with the verdict of acquittal which the jury came to. QUEEN *v.* DOORJODHUN SHAMONTO *alias* DEEJOBOR . . 19 W. R., Cr., 45

33. ———— *Verdict of acquittal by jury—Criminal Procedure Code, 1872, s. 263—Judge disagreeing from verdict of majority.*—A majority of the jurors (four out of five) acquitted the prisoner on a charge of attempt to commit rape. The Sessions Judge disagreed with that verdict, and referred the case to the High Court under s. 263 of the Code of Criminal Procedure, because in his opinion the offence charged was proved. The High Court found that the evidence for the prosecution was fully worthy of belief and consistent with probabilities, and sentenced the prisoner. IN THE MATTER OF TILUCKDHAREE . . . . . 2 C. L. R., 1

34. ———— *Criminal Procedure Code, 1872, s. 263—Interference with verdict of majority of jury where Sessions Judge differed.*—The Sessions Judge, differing from a majority of the jury, who acquitted the accused, referred the case to the High Court under s. 263 of the Criminal Procedure Code, 1872, to be dealt with as an appeal. Before proceeding with the case, the High Court considered it fair to the accused to give him notice to bring forward any objections he might have to the Sessions Judge's recommendation. On a consideration of the evidence, the High Court convicted the accused of the offence with which he had been charged in the Court below. QUEEN *v.* OOTTUM DHOBA

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35. ———— *Criminal Procedure Code, 1872, s. 263—Differing from verdict of acquittal by jury.*—Where the Sessions Judge did not consider a confession to have been induced by illegal pressure, the High Court, upon a reference under s. 263 of the Code of Criminal Procedure, held it to have been properly admitted, and finding it to be full and clear, and supported by reliable evidence, acted upon it by convicting the person who made it, notwithstanding his retraction of it in the Court of Session, and his being found not guilty by the jury. REG. *v.* BALVANT V. PENDHARKAR 11 Bom., 137

36. ———— *Criminal Procedure Code, 1872, s. 263—Trial on different charges—Discharge on some charges on which jury and Sessions Judge agree—Reference of whole case to High Court.*—In a case in which the accused were charged with murder (s. 302, Penal Code), culpable homicide not amounting to murder (s. 304), and voluntarily causing grievous hurt (s. 325), the Sessions Judge at the trial added a further charge of house-breaking by night in order to the commission of an offence (s. 457). The jury unanimously acquitted the prisoners of the three original charges, and a majority of the jury (four out of five) acquitted them also of the last charge. The Sessions Judge agreed with the verdict of the jury as regarded the three original charges, and recorded a formal order acquitting and discharging the prisoners on these three charges. He differed from the majority as to the fourth charge, and referred the case to the High Court under s. 263 of the Criminal Procedure Code. *Held* that where (as in this case) the Sessions Judge had approved of a verdict on certain charges, and finally acquitted and discharged the accused as to these charges, the High Court could not under s. 263 convict on the facts on these very charges. That section seems to contemplate only a case in which, without recording any order of acquittal or conviction, the Sessions Judge refers the whole case. As there

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was nothing in this case to show on what grounds the majority of the jury acquitted the prisoners on the additional charge, and as the Sessions Judge agreed with the unanimous verdict as to the three original charges the High Court presumed that the reason [illegible] in find- [illegible] charge [illegible] finding [illegible] rges, and [illegible] verdict [illegible] actically finding directly in the [illegible] t of the unanimous jury on the first three counts QUEEN *v.* UDYA CHANGA . . . 20 W. R., Cr., 73

37. ——————— *Verdict in accordance with charge—Verdict disagreed with by Judge—Penal Code, ss. 302, 304, 325—Reference under s 307, Act X of 1882*—A prisoner was charged under ss 302 and 304 of the Penal Code, and the Judge at the trial added a further charge under s 325 The Judge in his charge to the jury directed [illegible] finding the charges [illegible] y might find [illegible] jury unani- [illegible] arge framed [illegible] quitted him [illegible] a majority of [illegible] ramed under [illegible] r finding as [illegible] , and referred [illegible] s. 307 of the Criminal Procedure Code The High Court refused [illegible] rdict, on the ground that the [illegible] erroneous, [illegible] and having [illegible] might find [illegible] EMPRESS *v.* JACQUIET . . . I. L. R., 11 Calc., 85

38. ——————— *Criminal Procedure Code, 1882, s. 269—Jury wrongly treated as assessors by Judge—Unanimous opinion of jury treated as assessors accepted as formal verdict*—[illegible] arges of [illegible] rdict of [illegible] to the [illegible] ocedure, [illegible] charge [illegible] dacoity, [illegible] rregular [illegible] the verdict [illegible] t QUEEN- [illegible] Mad., 42

39 ——————— *Criminal Procedure Code, s 307—Powers of High Court on reference under s. 307—Criminal Procedure Code, ss. 418, 423 (d)*—No trial can be, legally speaking, concluded until judgment and sentence are passed, and the trial of a case referred by a Sessions Judge to the High Court under s 307 of the Criminal Procedure Code remains open for the High Court to conclude and complete, either by maintaining the verdict of the jury and causing judgment of acquittal to be recorded or by setting aside the verdict of acquittal and causing conviction and sentence to be entered against the accused. The provisions of s. 307 of the Criminal Procedure Code are not in any way [illegible] and the High Court has [illegible] of [illegible] and [illegible] ng [illegible] his [illegible] the [illegible] aw. [illegible] 20

40. ——————— *Sessions Judge, Opinion of—Criminal Procedure Code, s 307*—[illegible] of its powers [illegible] rocedure, the [illegible] own view of [illegible] ves, but in [illegible] udge no less [illegible] to its proper [illegible] , I L R., 1 Bom., 10, [illegible] r, 1 C L. R., 275; *The Empress v Dhunum Kazee, I L R., 9 Calc., 53, Queen-Empress v Mama Dayal, I L. R., 10 Bom., 497, The Queen v. Ram Churn Ghose, 20 W R., Cr., 33, The Queen v Sham Bagdi, 13 B L R., Ap., 19 20 W R., Cr., 78 The Queen v Hurro Manjhee, 14 B L R., Ap., 2 21 W R., Cr., 4 The Queen v Wazir Mundal, 25 W. R., Cr., 25, The Queen v Nobin Chunder Banerjee, 10 B L R., Ap., 20 20 W R., Cr., 70,* referred to QUEEN-EMPRESS *v* ITWARI SAHO

[I. L. R., 15 Calc., 269

41 ——————— *Criminal Procedure Code, ss 307, 418—Perversity of verdict—Procedure when Sessions Judge disagrees with verdict—Misdirection*—A jury returned a verdict of guilty against the accused in a trial for dacoity The Sessions Judge accepted the verdict, although he said he did not agree with it and had charged the jury for an acquittal; he observed that he could not refer the verdict as perverse since there was evidence against the accused which it was open to the jury to believe The accused appealed to the High Court on the ground (*inter alia*) that the Sessions Judge "ought to have referred the case to the High Court under the Criminal Procedure Code, s. 307" *Held* that since there had been no misdirection by the Sessions Judge, and there was some evidence to support the verdict, the High Court had no power to interfere, however absurd the verdict might be considered. QUEEN-EMPRESS *v* CHINNA TEVAN

[I. L. R., 14 Mad., 36

42. ——————— *Criminal misappropriation Charge of misappropriation of specific sums of money—Form of charge—Evidence of general deficiency—Criminal breach of trust—Penal Code, s 409—Practice—New trial*—The

VERDICT OF JURY—*continued.*

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accused was charged with abetting the offence of criminal breach of trust committed by the nazir of the Small Cause Court at Poona. The accused was a karkun in the nazir's office, and it was his duty to keep the accounts of moneys received in the office from judgment-debtors, and of moneys paid out to decree-holders. He was charged with abetting the misappropriation of three sums, *viz.*, R20 on the 19th November 1885, R45 on the 23rd November 1885, and R10 on the 26th June 1886. As to the first sum, it was alleged that an instalment of R25 due under a decree had been paid into the nazir's office by a judgment-debtor on the 19th November 1885, but the accused had entered in the office day-book only R5, thereby enabling the balance of R20 to be misappropriated. It appeared however, that a sum of R25, being the instalment due to the decree-holder under the above decree, had been in due course paid out to him on the 4th December 1885. As to the second sum of R45, it was alleged that a sum of R50 had been paid in, but only R5 had been entered by the accused, the balance being misappropriated. It appeared, however, in this case also that the full amount of the instalment, *viz.*, R50, had been duly paid out to the decree-holder a few days after its receipt. As to the third sum, it was alleged that the total receipts entered in the book on the 26th June 1886 were R55, but the figure entered as the total was only R45, and that the balance of R10 had been misappropriated. The jury found the accused guilty on all three charges. On appeal by him, it was contended that there was no evidence of the misappropriation of the specific sums in respect of which he was charged. There was evidence of a general deficiency; but there was no evidence that these specific sums formed part of that deficiency. On the contrary, the evidence showed that the instalments paid into the office had been duly paid out to the persons to whom they were payable. *Held* that, the jury having had the facts brought to their notice, their verdict was final, and the High Court would not interfere with the verdict. The provisions of s. 167 of the Evidence Act (I of 1872) apply to criminal trials by jury. When part of the evidence which has been allowed to go to the jury is found to be irrelevant and inadmissible, it is open to the High Court in appeal either to uphold the verdict upon the remaining evidence on the record under s. 167 of the Indian Evidence Act (I of 1872) or to quash the verdict and order a re-trial. The law, as settled in England by the *Queen* v. *Gibson, L. R., 18 Q. B. D., 537*, and as stated by the Privy Council in *Makin* v. *Attorney-General of New South Wales, L. R. (1894), A. C., 57 (69, 70)*, with reference to the granting of new trials where evidence has been improperly admitted, does not apply to India. *Wafadar Khan* v. *Queen-Empress, I. L. R., 21 Calc., 955*, not followed. QUEEN-EMPRESS *v.* RAMCHANDRA GOVIND HARSHE . **I. L. R., 19 Bom., 749**

43. ———— *Special verdict—Murder—Culpable homicide—Grave and sudden provocation—Loss of self-control—Criminal Procedure Code (1882), s. 307—High Court's power of interfering with the verdict of a jury.*—The accused was tried for murder. The first verdict of the jury was "guilty of murder under grave and sudden provocation." The Sessions Judge told the jury that it was their duty, after considering the question of provocation, to return a simple verdict of guilty or not guilty. The jury, therefore, brought in a second verdict of "not guilty." The Judge, considering this verdict to be perverse, referred the case to the High Court under s. 307 of the Code of Criminal Procedure (Act X of 1882). *Held* that the High Court will not interfere with the verdict of a jury unless it is shown to be clearly and manifestly wrong. A verdict ought to be considered a proper and not a perverse verdict if it is one which reasonable men might find on the facts in evidence. *Queen-Empress* v. *Dada Ana, I. L. R., 15 Bom., 452*, and *Queen-Empress* v. *Magana, I. L. R., 14 Bom., 115*, followed. QUEEN-EMPRESS *v.* DEVJI GOVINDJI [**I. L. R., 20 Bom., 215**

44. ———— *Criminal Procedure Code (1882), ss. 297 and 423, cl. (d)—Misdirection to jury—Allowing verdict before accused is called on for defence.*—To allow the jury to pronounce their verdict before the accused is called upon to enter on his defence is a misdirection, though the Judge omits to charge the jury at all. In such a case, cl. (*d*) of s. 423 of the Criminal Procedure Code does not stand in the way of the Appellate Court's interfering with the verdict of the jury. QUEEN-EMPRESS *v.* IMAM ALI KHAN *alias* NATHU KHAN . . . **I. L. R., 23 Calc., 252**

45. ———— *Criminal Procedure Code, 1882, ss. 303, 307, 429—Power of Judge to put questions to jury under s. 303 after verdict delivered—Reference to High Court under s. 307—Power of High Court to interfere with verdict—Judges of High Court differing in opinion—Reference to third Judge—Letters Patent, 1865, cl. 36—Practice—Procedure.*—A prisoner was tried for murder and acquitted by a majority of the jury. The Sessions Judge disagreed with the verdict and submitted the case to the High Court under s. 307 of the Criminal Procedure Code (Act X of 1882). The Judges of the High Court (JARDINE and CANDY, *JJ.*) differing in opinion, the case was laid before a third Judge (SARGENT, *C.J.*) under s. 429, who held that the verdict of the jury should be set aside, and that the prisoner was guilty of murder. *Per* SARGENT, *C.J.*—It is the uniform practice of the High Court, in cases referred under s. 307 of the Criminal Procedure Code (Act X of 1882), not to interfere with the verdict of a jury except when it is clearly and manifestly wrong. There is no true analogy between the discretionary power conferred on the High Court under this section and that which the Courts of law in England have exercised in interfering with the finding of a jury in civil actions by directing a new trial on the ground of the verdict

VERDICT OF JURY—*continued.*

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[illegible] ferred on the High Court by s. 307. Where a prisoner was charged with murder by administering dhatura poison to the deceased, the majority of the jury found him not guilty. After the delivery of the verdict, the Sessions Judge questioned the jury, who, in reply to specific questions on the points, stated [illegible] doubts [illegible] from a [illegible] poison [illegible] the [illegible] poison The Sessions Judge differed so completely with the jury on the evidence that he submitted the case to the High Court under s 307 of the Criminal Procedure Code *Per* JARDINE, *J.*—The verdict of acquittal should be upheld. It was not manifestly wrong nor absolutely unreasonable It was a verdict that reasonable but cautious men might find The Sessions Judge ought not to have put to the jury, after [illegible] the Sessions Judge was wrong in putting any questions to the jury after the verdict was delivered, [illegible] is bound to act upon its own view of the evidence [illegible] weight to the opinion of the Judge as well as to the verdict of the jury When a case like the present depends upon the inferences to be drawn from two or three facts, neither principle nor statute forbids the Sessions Judge from asking the jury to state a plain [illegible] finding on those facts Where the Judges of the High Court differed in opinion in a case referred [illegible] laid before a third Judge of the High Court, being of opinion that the Criminal Procedure Code overrules the provisions of cl. 36 of the Letters Patent, 1865. QUEEN EMPRESS *v.* DADA ANA

[I. L. R., 15 Bom., 452

40. ———————— *Criminal Procedure Code (Act X of 1882), s. 423—Setting aside verdict of the jury—Power of Appellate Court to deal with the case*—If the verdict of the jury is set aside on any of the grounds mentioned in cl. (*d*) of s. 423 of the Criminal Procedure Code (Act X of 1882), then there is no restriction on the powers of the Appellate Court to deal with a case of which it has complete seizin in any of the manners provided in that section The law nowhere lays down that when the verdict of the jury is set aside the Court must necessarily direct a new trial *Wafadar Khan v. Queen-Empress, I L R, 21 Calc.*, 955, dissented from The course adopted in *Queen-Empress v O'Hara, I L R, 17 Calc 642; Regina v. Naoroji Dadabhai 9 Bom., H C*, 358; and *Queen-Empress v Haribole Chunder Ghose, I L R., 1 Calc.*, 207, followed TAJU PRAMANIK *v* QUEEN-EMPRESS . . . I. L. R., 25 Calc., 711

VESTED INTERESTS.

See CASES UNDER HINDU LAW—WILL—CONSTRUCTION OF WILLS—VESTED AND CONTINGENT INTERESTS.

See SUCCESSION ACT, s 98
[I. L. R., 4 Calc., 304

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VESTING ORDER.

See CASES UNDER INSOLVENCY—CLAIMS OF ATTACHING CREDITORS AND OFFICIAL ASSIGNEE

See INSOLVENCY—PROPERTY ACQUIRED AFTER VESTING ORDER.
[I. L. R., 17 Mad., 21
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VICINAGE.

See CASES UNDER MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS.

VILLAGE ACCOUNTANT.

See CRIMINAL PROCEDURE CODE, s. 45 (1872, s 90) . I. L. R., 1 Mad., 200

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See PASTURAGE, RIGHT TO.
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VILLAGE CHOWKIDAR.

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VILLAGE CHOWKIDARS' ACT (BENGAL ACT VI OF 1870).

See CESS . I. L. R., 22 Calc., 680

——— s. 8—*Order imposing fine by Sub-divisional Officer—Judicial order—Revision by the High Court—Magistrate, Jurisdiction of.*—Where the collecting member of a punchayet, constituted under the provisions of the Village Chowkidars' Act (Bengal Act VI of 1870), was fined by the Sub-divisional Officer of Serampore under s. 8 of the Act for having disobeyed his orders and realized assessment from the villagers under the Act from the month of Baisakh, though the Act was not introduced into the sub-division till the month of Kartick following,—*Held* the fine having been imposed by a Magistrate under the provisions of an Act of the Bengal Council, it was imposed in respect of an "offence" as defined by s 4, cl. (*p*), of the Criminal Procedure Code, and by virtue of s. 4 of Bengal Act V of 1867 the provisions of ss. 63 to 70 of the Penal Code and s. 61 of the Criminal Procedure Code were applicable to the fine. The order of the Sub-divisional Officer was in its nature a judicial order, and was therefore subject to revision by the High Court. The order was bad because (1) there was no trial; (2) no act punishable with fine under s. 8 of the Act (Bengal Act VI of 1870) had been committed; and (3) because the District Magistrate only had the power to impose the fine. QUEEN-EMPRESS *v.* ASHWINI KUMAR GHOSE
[I. L. R., 23 Calc., 421

——— ss. 26, 27, and 34.

See PENAL CODE, s. 183.
[I. L. R., 25 Calc., 274

——— ss. 48 and 64—*Chowkidari chakran land, Settlement of—Power of Collector—Power of Commissioner to set aside Collector's order.*—Under s. 48 of Bengal Act VI of 1870, a Collector can only settle lands with the zamindar within whose estate the lands lie. S. 64 of that Act does not empower the Commissioner to set aside an order passed by the Collector under s. 48. BEJOY CHAND MAHATAB BAHADUR *v.* KRISTO MOHINI DASI
[I. L. R., 21 Calc., 626

——— s. 51—*Chowkidari chakran lands, Suit for recovery of, by patnidar against zamindar with whom the same had been settled under Bengal Act VI of 1870—Landlord and tenant.*—Where a patnidar sought to have transferred to him certain chowkidari chakran lands, which the Government had settled with the zamindar under Bengal Act VI of 1870, and where it was found that the lands were part of plaintiff's patni, and that the zamindar had sublet the same to a tenant,—*Held* that the patnidar was entitled to possession, but not to khas possession of the lands. That the tenant with whom the lands had been settled by the zamindar was entitled to retain actual possession of the lands. That the patnidar was bound to pay to the zamindar such rents for these lands as corresponded to the proportion between the gross collections and patni rent formerly payable by him. HARI NARAIN MAZUMDAR *v.* MUKUND LAL MUNDAL . . 4 C. W. N., 814

——— ss. 58, 61—*Decision of Commission—Village chowkidars—Chowkidari chakran lands—Civil suit.*—The words "final and conclusive" used in s. 61 of Bengal Act VI of 1870 must be taken to be used in their ordinary and literal sense. Where, therefore, a commission has been appointed under s. 58 for the purpose therein mentioned, and such commission has ascertained and determined that certain lands are chowkidari chakran lands, in the absence of fraud or non-compliance by the commissioners with the provisions of the Act, their decision is conclusive evidence in any civil suit of the fact that the lands are what they have found them to be. NOBOKRISTO MUKERJEE *v.* SECRETARY OF STATE FOR INDIA
[I. L. R., 11 Calc., 632

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[I. L. R., 13 Mad., 145

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[I. L. R., 8 Mad., 500
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See CRIMINAL PROCEDURE CODES, s. 45 (1872, s. 90) . I. L. R., 1 Mad., 266

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[I. L. R., 21 Bom., 733

VOLUNTARY ASSIGNMENT.

See CASES UNDER INSOLVENCY—VOLUNTARY CONVEYANCES AND OTHER ASSIGNMENTS BY DEBTOR.

VOLUNTARY CONVEYANCE.

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[I. L. R., 2 All., 691

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[I. L. R., 3 Calc., 434

[illegible]

another for value, the conveyance operates as a conveyance of the estate which the settlor had before the voluntary settlement, the Stat. 27 Eliz., c. 4, putting the settlement out of the way, so that it shall not affect the conveyance which is made to the purchaser words showing an intention on the part of the person who made the voluntary gift to convey to the purchaser all the interest or estate that he had are sufficient to avoid such gift JUDAH *v.* ABDOOL KUREEM . . 22 W. R., 60

VOLUNTARY PAYMENT.

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[I. L. R., 7 Calc., 573

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[8 B. L. R., 418
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3 N. W., 162
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17 W. R., 460
8 B. L. R., Ap., 55

1. — Money paid, but not due, and paid under compulsion—*Contract Act (IX of 1872), ss. 15, 72*—In execution of a decree, the plaintiff purchased certain property. Subsequently the defendant, in execution of another decree against the former owner of the property, proceeded to execute his decree against the same property. The plaintiff thereupon preferred a claim which was disallowed, as he had not then obtained, and consequently could not produce, the sale-certificate. In order to prevent the sale, he then paid the amount of the defendant's decree into Court, and subsequently instituted a suit against the defendant to recover the amount so paid into Court, to prevent the sale. The defendant contended that the amount was paid voluntarily and could not be recovered back. *Held*, following *Dooli Chand v. Ram Kishen Sing, L. R. 8 I. A., 93 I. L. R., 7 Calc. 648* that it was not a voluntary payment and that the plaintiff was entitled to a decree. *Fatima Khatoon Chowdrain v. Mahomed Jan Chowdhry, 12 Moore's I. A. 65 10 W. R., P. C., 29*, referred to. *Ashan v. Ram Proshad Dass, 1 Shome, 25*, doubted. JUGDEO NARAIN SINGH *v.* RAJA SINGH
[I. L. R., 15 Calc., 656

2. — — Money paid under protest—*Right of suit—Contract of indemnity—Contract Act, ss. 124, 141, 142*—The Thakor of Ilmd possesses several talukhdari villages in the Ahmedabad District, for which he pays a lump jumma to Government. One of these villages was Akru. Disputes arose between the Thakor and the grassias of Akru as to the ownership of the village. The Thakor filed a suit against the grassias, which was ultimately compromised and a consent-decree was passed in 1883 providing (*inter alia*) that the Thakor should assign to the grassias a moiety of the village; that the grassias should hold the same free from all liability to pay the jumma and that the Thakor should alone be responsible for all Government demands. In accordance with this decree, a moiety of the village was made over to the grassias. The Collector demanded jummabandi for this moiety. The Thakor intervened, and objected to the demand, on the ground that he paid a lump jumma for the whole of his taluka, including the moiety of the village assigned to the grassias. Government, however, passed a resolution declaring that half of the village belonged to the grassias; that from them the Government had a right to levy the jumma, that the Thakor might, if he

VOLUNTARY PAYMENT—*continued.*

chose, pay the same on behalf of the grassias, and that, if it was not paid, it would be recovered by attachment and sale of the grassias' half share. The Thakor thereupon paid the jumma on behalf of the grassias for two years, and then filed a suit against Government to recover back the payments he had made, and for a declaration that Government had no right to levy any assessment on any portion of the village beyond the lump jumma fixed for his talukh. This suit was dismissed on the preliminary ground that the Thakor had no cause of action against Government in respect of any of the reliefs sought, the Court being of opinion that the payments he had made to Government on account of the grassias were voluntary, and that he had no interest whatever in the grassias' half share of the village. *Held*, reversing the decision of the lower Court, that the suit would lie. Under the consent-decree, the Thakor stood in the relation of an insurer to the grassias from all exactions of Government dues. The payments of jumma he made on account of the grassias were therefore not voluntary, but made under protest, and as such were recoverable by suit. JASVATSINGJI FATESINGJI *v.* SECRETARY OF STATE FOR INDIA

[I. L. R., 14 Bom., 299

3. ———— **Money paid for benefit of another**—*Contract Act (IX of 1872), ss. 69 and 70—Money paid to protect property from sale in execution of decree for arrears of rent.*—Certain immoveable property was inherited by *S*, the mother of the plaintiff, from her husband, and during her tenure of it she alienated it by deed of sale to the defendants. *S* died in April 1890, and the estate then devolved upon the plaintiff, an only daughter (there being no male issue). In 1890 the property in possession of the defendants was, at the suit of a person who was the landlord, ordered to be sold together with other properties of the defendants for arrears of rent, due in the lifetime of *S*, and to prevent the sale the plaintiff paid the amount of the decree. In a suit for possession of the property and for a refund of the sum paid by the plaintiff to stop the sale, the defendants claimed an absolute interest in the property, but the Courts below found that the alienations by S to the defendants were not made for legal necessity and were therefore invalid. *Held* that the payment made by the plaintiff was not a voluntary payment, but was one which she was entitled to recover from the defendants. It being a question at the time whether the property belonged to the plaintiff or to the defendants, the payment to stop the sale was one in which the plaintiff was interested sufficiently to bring the case within s. 69 of the Contract Act. S. 70 was also applicable, as the payment relieved the defendants from liability to their landlord, and was made for the defendants, and not gratuitously, and the defendants enjoyed the benefit of such payment. The principles laid down in the cases of *Duli Chand* v. *Ramkishen Singh, I. L. R., 7 Calc., 648: L. R., 8 I. A., 93; Smith* v. *Dinonath Mookerjee, I. L. R., 12 Calc., 213;* and *Jugdeo Narain Singh* v. *Raja Singh, I. L. R., 5 Calc., 656,* were held to govern this case. BAMA SUNDARI DASI *v.* ADHAR CHUNDER SIRKAR

[I. L. R., 22 Calc., 28

4. ———— **Payment made to save the patni talukh from sale**—*Contract Act (IX of 1872), s. 69—Arrears of rent—Payment made by a mortgagee.*—The plaintiff, who was the mortgagee of a certain patni talukh, obtained a consent decree for R35,000 on his mortgage-bond on the 13th August 1888. In the solenamah it was stipulated that, if the decretal amount were not paid within a certain date, it was to be increased to R52,000. On the 14th March 1891 the plaintiff applied for execution of that decree, and claimed the larger amount, as admittedly the smaller amount was not paid within the stipulated period. The Subordinate Judge allowed the plaintiff's claim. The defendant appealed to the High Court, and on the 31st September 1891 the order of the Subordinate Judge was reversed, and an inquiry was directed as to the conduct of the plaintiff in the mattter. On the 31st August 1892 the Subordinate Judge held that the plaintiff had been guilty of misconduct, and that the decree had been fully satisfied. The plaintiff appealed from this order to the High Court, and on the 4th January 1894 the appeal was dismissed, and he preferred an appeal to Her Majesty in Council. In the meantime on the 13th May 1892 the plaintiff had paid a certain sum of money to protect the patni talukh from sale for arrears of rent due to the landlord. In a suit brought to recover from the defendant the amount so paid,—*Held* that the payment was not a voluntary payment, and that the plaintiff was interested in the payment of the money, and therefore he was entitled to recover it. BINDUBASHINI DASSI *v.* HARENDRA LAL ROY

[I. L. R., 25 Calc., 305
2 C. W. N., 150

5. ———— **Payment by a purchaser of a patni talukh during the pendency of an appeal for setting aside the patni sale**—*Person interested in the payment of the patni rent—Patni Regulation (VIII of 1819), s. 14.*—A payment of rent made by the purchaser of a patni talukh after the decision of the first Court in a suit brought by the defaulting patnidars for the setting aside of the patni sale, by which it was held that the sale was invalid, and during the pendency of an appeal preferred, not by the plaintiff, the auction-purchaser, but by the zamindar at whose instance the said sale had been brought about, is not a voluntary payment, inasmuch as he (the plaintiff) is a person interested in the payment of the money, within the meaning of s. 69 of the Contract Act. *Bindubashini Dassi* v. *Harendra Lal Roy, I. L. R., 25 Calc., 305,* followed. The remedy which the plaintiff in this case had, after the reversal of the sale, to be re-imbursed by the defendant under s. 69 of the Contract Act was held not to be curtailed by the provisions of s. 14 of Regulation VIII of 1819. RADHA MADHUB SAMONTA *v.* SASTI RAM SEN . I. L. R., 26 Calc., 826

6. ———— **Payment of decree for rent by purchaser at sale for arrears of rent**—*Contract Act (IX of 1872), ss. 69, 70—Suit to recover money so due.*—Rent is by operation of law the first charge on a tenure, and a person who purchases the same at any execution-sale must, in the absence of anything to denote the contrary, be taken to

VOLUNTARY PAYMENT—*concluded.*

purchase it, charged with the rent which is due in respect of it at the time of its purchase, and there being no privity between him and the judgment-debtor, he cannot recover from the latter the money which he is obliged to pay for the rent so due at the time of the purchase. So where a plaintiff, in execution of a mortgage-decree, purchased the tenure mortgaged, and then paid the money due under a decree obtained by the landlord against the tenure-holder for arrears of rent for the period anterior to

VOLUNTARY SETTLEMENT

See ONUS OF PROOF—DECREES AND DEEDS, SUITS TO ENFORCE OR SET ASIDE
[I. L. R., 15 Bom., 549

Breach of Covenants in—

See DAMAGES—SUITS FOR DAMAGES—BREACH OF CONTRACT
[I. L. R., 2 Bom., 273

VOLUNTEERS

See ARMY ACT, s. 19
[I. L. R., 22 All., 323

VOTERS, LIST OF—

See CALCUTTA MUNICIPAL CONSOLIDATION ACT, s. 31 I. L. R., 22 Calc., 717

W

WAGERING CONTRACT

See CASES UNDER CONTRACT—WAGERING CONTRACTS

See EVIDENCE—PAROL EVIDENCE—VARYING OR CONTRADICTING WRITTEN INSTRUMENTS I. L. R., 9 Calc., 791
[I. L. R., 13 Bom., 585
I. L. R., 17 Mad., 480

WAGES.

See ATTACHMENT—SUBJECTS OF ATTACHMENT—WAGES 1 B. L. R., S. N., 15
[I. L. R., 5 Bom., 133

See CASES UNDER MASTER AND SERVANT

— of labourers.

See BENGAL ACT VI OF 1865.
[3 B. L. R., A. Cr., 39

WAGES—*concluded*

——— Suit for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—WAGES
[6 B. L. R., Ap., 91

See SMALL CAUSE COURT RANGOON.
[I. L. R., 10 Calc., 878

WAGING WAR.

See JURISDICTION OF CRIMINAL COURT—OFFENCES COMMITTED ONLY PARTLY IN ONE DISTRICT—ABETMENT OF WAGING WAR . 9 B. L. R., Ap., 36

See SENTENCE—TRANSPORTATION
[3 W. R., Cr., 18

WAGING WAR AGAINST THE QUEEN.

——— Conspiracy to wage war—*Treason—Misprision of treason—Limitation of period for prosecution—Penal Code, s. 121—7 Will. III, c. 3, s. 5.*—The offence of engaging in a conspiracy to wage war, and that of abetting the waging of war, against the Queen under s. 121 of the Penal Code are offences under the Penal Code only, and are not treason or misprision of treason; and therefore the provisions of the Stat. 7 Will. III, c. 3, s. 5, as to placing a limitation on the period for prosecution are not applicable. QUEEN *v.* AMIRUDDIN
[7 B. L. R., 63: 15 W. R., Cr., 25

WAIVER.

See CASES UNDER ACQUIESCENCE.

See ARBITRATION — AWARDS — VALIDITY OF AWARDS AND GROUND FOR SETTING THEM ASIDE I. L. R., 21 Calc., 590

See CASES UNDER BOND

See ESTOPPEL—ESTOPPEL BY CONDUCT
7 Mad., 203
[6 Mad., 14
I. L. R., 18 Calc., 341
I. L. R., 15 Mad., 82
I. L. R., 14 Bom., 558

See FOREIGN COURT, JUDGMENT OF
[I. L. R., 2 Mad., 400, 407
I. L. R., 15 Mad., 82

See GUARDIAN—DUTIES AND POWERS OF GUARDIANS . I. L. R., 18 Calc., 99
[L. R., 17 I. A., 90

See INSURANCE—LIFE INSURANCE
[I. L. R., 23 Calc., 320

See CASES UNDER LIMITATION ACT, 1877, ART. 75.

See CASES UNDER LIMITATION ACT, 1877, ART. 179—ORDER FOR PAYMENT AT SPECIFIED DATES

See MALABAR LAW—MORTGAGE
[I. L. R., 13 Mad., 490
I. L. R., 15 Mad., 450

WAIVER—*continued.*

8. ———— **Effect of waiver**—*Landlord and tenant—Waiver of right of forfeiture for non-payment of rent.*—A landlord who has waived his right to sue for the cancelment of a lease on the raiyat's failure to pay six successive instalments is not barred by limitation from suing for cancelment on further breaches of the covenant. DULLI CHAND *v.* MEHER CHAND SAHOO . . 8 W. R., 138

9. ———— *Waiver of vendor binding on purchaser—Sale for arrears of rent.*—The Government, as auction purchaser of the zamindari right of a pergunnah, having waived all right to cancel the tenures of the talukhdars, and having admitted them to settlement and otherwise recognized their rights, it was held that the defendant, a purchaser, could not put in force against the talukhdars any rights which his vendor had waived. OBHOY CHURN ROY *v.* ASANGOLLAH [2 W R., Act X, 81

10. ———— **Waiver of rights under mortgage**—*Resumption by Government of mortgaged land under Land Acquisition Act, and re-sale*

[illegible]

quently, while the mortgage was still in force, re sold the portion taken, to the mortgagor, who sold it to a third person *bonâ fide* for value. In a suit by the mortgagee (who had taken no steps to obtain any portion of the money paid by the Government for the land) praying for the sale under the mortgage of the

[illegible]

Quære—Whether the mortgage claim might not, but for the waiver, have re-attached, on the lands resumed by the Government again coming into the possession of the mortgagor. RAM AWTAR SINGH *v.* TULSI RAM . . . 5 C. L. R., 227

11. ———— **Waiver of grounds of**

[illegible]

rested on that ground only, is not a safe warrant for the inference that the other grounds were waived. BONOMALEE CHURN MITTER *v.* SHOROOP HOOTAIT [11 W. R., 60

12. ———— *Objection as to absence of demand for enhanced rent—Objection as to want of parties—Objection taken for first time on appeal.*—Where in a suit for rent at an enhanced rate no objection as to the absence of legal demand for enhanced rent was taken,—*Held* that the suit was properly tried by the Court of first instance on the merits. The lower Appellate Court having dismissed the suit on the ground that the inamdar was not a party to the suit, a point on which no issue was raised, although it had been taken in the written statement and which was not made a ground of appeal. *Held* that the point must be considered to have been abandoned at the trial; it was therefore not open to the lower Appellate Court to dismiss the suit on that ground. GOVINDRAV KRISHNAV RAIBAGKAR *v.* HARIBIN MONAPA I. L. R., 10 Bom., 580

13. ———— **Waiver of right to execute decree**—*Agreement to give time to debtor—New contract.*—The granting of a judgment-debtor the indulgence of a temporary stay of the warrant of execution issued to enforce the decree does not prejudice the judgment creditor's right to execution at a subsequent time. BUTCHENNER *v.* RAYUDU [5 Mad., 235

14. ———— *Waiver where decree holder was allowed to perform act under decree in case judgment debtor failed to do so*—

[illegible]

H C applied for an injunction to stop the work as ro.

[illegible]

debtor incurred considerable expense amounted to a waiver of his right to take matters into his own hands. GOPAL KISHEN GOSSAIN *v.* HEM CHUNDER GOSSAIN [16 W. R., 38

15. ———— **Waiver of right to interest on arrears of rent**—*Receipt of arrears of rent for*

[illegible]

arrears, and without claiming to apply any portion of the payments towards the discharge of interest. Having subsequently brought a suit for interest, the Courts [illegible] waived [illegible] *Held* [illegible] ence, [illegible] special appeal. DINDOYAL PORAMANICK *v.* I RAN KISHEN PAUL CHOWDHRY

[Marsh., 394: W. R., F. B., 117: 2 Hay, 423

16. ———— *Omission to enforce interest under kabuliat—Variation in contract.*—In order to establish variation in a written contract, it must be distinctly pleaded and proved when and how the variation took place, the mere fact of a kabuliat not having been enforced in the most stringent manner does not take away from the lessor the right to enforce it. PEAREE MOHUN MOOKERJEE *v.* BROJO MOHUN BOSE . 21 W. R., 50

PEAREE MOHUN MOOKERJEE *v.* BROJO MOHUN BOSE . . . 23 W. R., 423

17. ———— *Omission to claim interest—Pleading—Both parties stipulated*

WAIVER—*continued*

of the rent in kind NARAIN GEER *v.* GOUR SHAUN DOSS . . . . . 23 W. R., 388

25 ——— Withdrawal of objection to sale in execution of decree—*Effect of, on subsequent right to sue to set it aside*—The plaintiff purchased certain property from the first and second defendants The property was subsequently put up for sale by order of the Civil Court in execution of a decree against the first and second defendants and

consent before the sale In a suit by the plaintiff for the recovery of the land—*Held* that the plaintiff was

26 ——— Relinquishment by Hindu widow—*Relinquishment of title to property by widow—Petition*—A mere petition by a widow to the effect that she has relinquished her title in certain property in favour of parties suing the lessees of the property for possession is not a legal relinquishment of her share therein OOMA CHURN KOONDOO *v.* BHOOBUN MOHUN PAL 10 W R, 98

27. ——— Agent's right to execute decree obtained by him as agent—*Civil Procedure Code 1882, s 87—Recognized agent—Execution of decree*—P filed a suit in the second class Subordinate Judge's Court at Mahad As P resided at Thana outside the jurisdiction of the Court of Mahad she authorized her agent, under a general

decree The Court of Mahad passed an order upon

appeal was dismissed. *Held* that the agent could not be prevented from executing the decree which he had obtained as agent No objection had been taken to the agent's right to represent P at any stage of the litigation prior to the final decree That objection must therefore be deemed to have been virtually

28. ——— Remission of part performance of contract—*Sum accepted on account of interest*—A hypothecation bond provided for payment of interest on the principal sum at the rate of 9 per cent. and contained a further provision that, on default being made in payment of interest accruing due, interest should be paid from the date of the

WAIVER—*continued.*

bond at the rate of 15 per cent. Default was made when the first and second payments of interest became due After the second payment had become due, the creditor accepted payment on account of interest of a sum, a little more than the arrears calculated at 9 per cent In a suit by the creditor,—*Held* that the plaintiff had not waived any right under the bond by accepting the payment on account of interest. NANJAPPA *v.* NANJAPPA

I. L. R., 12 Mad., 16[illegible]

29 ——— Decree payable by instalments—*Execution of decree—Default—Limitation*—A decree was made for payment of the decretal amount by monthly instalments running over a period of twelve years and it was provided that on default the decree-holder might execute the decree as a whole for the balance then due In 1883 default was made, and in 1884 the decree-holder filed an application for execution in respect thereof but did not proceed with it and continued to receive the monthly instalments In 1887 he made another

Calc., 56, distinguished PUDDUN LAL *v.* LEKHRAJ DAS . . I. L. R., 11 All., 46[illegible]

30 ——— *Decree payable by instalments and in default execution for whole amount to issue—Default in payment of instalments—Waiver by plaintiff of right to execute decree—Receipt by plaintiff of overdue instalments*—By a consent decree passed in a mortgage suit the defendant was ordered to pay to the plaintiff the sum of R1,800 by yearly instalments of R50 payable on 30th April in each year, and in case of default in payment of any instalment the plaintiff was to be at liberty to execute the decree by sale of the mortgaged property The defendants failed to pay the first instalment, which fell due on the 30th April 1888 and the plaintiff applied for execution and obtained an order for the sale of the property. In order to prevent the sale, the defendants on the 13th November 1888, paid R60 out of Court, and the application for execution thereupon was allowed to drop The defendants subsequently made the

after the summer vacation, which had begun on the 30th April 1890 On the 6th June 1890 the plaintiff again applied for execution of the decree, which was granted by the Subordinate Judge On appeal the District Judge reversed the order, holding that the plaintiff by accepting the above payments had waived his right to execute the decree On appeal to the High Court,—*Held* that the plaintiff was entitled to execution The acceptance of the payments did not prove a waiver They were not accepted on account of the specific instalments in arrears, but on account of the whole decree, and

WAIVER—*concluded.*

even if they were taken as payments of overdue instalments, they could not by themselves prove a waiver. BALAJI GANESH v. SAKHARAM PARASHRAM . . . . I. L. R., 17 Bom., 555

31. ———— **Omission to take objection that pottahs and muchalkas had not been exchanged before suit**—*Suit to recover customary dues payable on account of a chattram.*—In a suit by the District Board in charge of a chattram to recover a certain sum as the arrears of various merais, being customary dues payable by the defendants for the benefit of the chattram on account of lands held by them, the defendants raised no objection on the ground that there had been no exchange of pottahs and muchalkas, but among other defences they relied upon a plea of limitation. *Held* (1) that the defendants should be considered to have admitted tacitly that the exchange of pottahs and muchalkas has been dispensed with. VENKATAYARAGA v. DISTRICT BOARD OF TANJORE [I. L. R., 16 Mad., 305

WAJIB-UL-URZ.

See COLLECTOR . I. L. R., 15 All., 410

See EVIDENCE—CIVIL CASES — MISCELLANEOUS DOCUMENTS—WAJIB-UL-URZ. [I. L. R., 2 All., 876 I. L. R., 15 All., 147

See MAHOMEDAN LAW — PRE-EMPTION —CEREMONIES . I. L. R., 9 All., 513

See MAHOMEDAN LAW—PRE-EMPTION—MISCELLANEOUS CASES. [I. L. R., 12 All., 234

See MAHOMEDAN LAW—PRE-EMPTION—PRE-EMPTION AS TO PORTION OF PROPERTY . . I. L. R., 10 All., 182 [I. L. R., 11 All., 108 I. L. R., 21 All., 119

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—CO-SHARERS. [I. L. R., 9 All., 480 I. L. R., 10 All., 472

See MAHOMEDAN LAW—PRE-EMPTION—RIGHT OF PRE-EMPTION—WAIVER OF RIGHT OR REFUSAL TO PURCHASE. [I. L. R., 11 All., 108

See CASES UNDER PRE-EMPTION.

See WASTE LANDS I. L. R., 19 All., 172

———— **Testamentary bequest contained in**—

See HINDU LAW—WILL—CONSTRUCTION OF WILLS — ESTATES ABSOLUTE OR LIMITED . I. L. R., 19 All., 16

WAQF.

See ACT XX OF 1863, s. 18. [15 B. L. R., 167 I. L. R., 3 Calc., 324

See CASES UNDER MAHOMEDAN LAW—ENDOWMENT.

WARRANT.

See INSOLVENT ACT, s. 50. [I. L. R., 17 Calc., 209

———— **Arrest or search without**—

See ESCAPE FROM CUSTODY. [24 W. R., Cr., 45 I. L. R., 19 Mad., 310

See OPIUM ACT, s. 9. [I. L. R., 24 Calc., 691

See PRIVATE DEFENCE, RIGHT OF. [7 Bom., Cr., 50 I. L. R., 19 Mad., 349

———— **Service of**—

See PENAL CODE, s. 186. [I. L. R., 22 Calc., 596, 759 I. L. R., 23 Calc., 896 I. L. R., 24 Calc., 320

1. ———— **Warrants made by Lieutenant-Governor of Bengal**—*Seal of Court.*—The Court will order its seal to be impressed on any warrant made by the authority of the Lieutenant-Governor of Bengal, even if not actually signed by him. ANONYMOUS . 1 Ind. Jur., N. S., 106

2. ———— **Search warrant**—*Criminal Procedure Code, 1861, ss. 114, 115—Requisites of warrant.*—It is essential to the legality of a search warrant, under s. 114 of the Code of Criminal Procedure, that the production of some specified and particular thing is desired; that the Magistrate alone shall determine that such production is necessary; and that a specified house or place only is to be searched. The warrant must, under s. 115 of that Code, be directed to some other person only when a police officer is not forthcoming. QUEEN v. HOSSAIN ALI CHOWDHRY . . 8 W. R., Cr., 74

3. ———— *Criminal Procedure Code, s. 96—Magistrate, Jurisdiction of.*—The accused was charged with the offence of criminal misappropriation of treasure belonging to a temple of which he was alleged to be the trustee. From the complaint, it appeared that some of the treasure belonging to the temple had been buried under a flagstaff in the temple, and the Magistrate was of opinion that the nature of the property so buried had an important and material bearing on the case for the prosecution. *Held* the Magistrate had jurisdiction to issue a warrant to search for and produce such property upon information which he considered credible, since there was a complaint before him duly affirmed as prescribed by the Criminal Procedure Code; and that it was not incumbent on him to wait until the evidence for the prosecution should have been recorded in the presence of the accused. QUEEN-EMPRESS v. MAHANT OF TIRUPATI [I. L. R., 13 Mad., 18

4. ———— *Criminal Procedure Code (Act X of 1882), s. 96—Issue of search warrant in the absence of any inquiry, trial, or other proceeding pending before Magistrate.*—Some treasure belonging to the Native State of Radhanpur was missing. The Administrator of

WARRANT—*concluded*

Radhanpur sent a telegram to the District Superintendent of Police at Ahmedabad, stating that part of the missing treasure was in the possession of the accused, who was a resident of Ahmedabad, and asking that this house should be searched. In consequence of his telegram, the City Police Inspector applied for a search-warrant to the City Magistrate of Ahmedabad. Thereupon the Magistrate issued a search-warrant under s. 96 of the Code of Criminal Procedure. In execution of this warrant, the house of the accused was searched and the police seized and took away certain property belonging to the accused, to his wife, and to his servant. The accused was subsequently arrested under a warrant issued by the Political Superintendent of Palanpur under s. 11 of the Extradition Act (XXI of 1879), but he was admitted to bail by the District Magistrate of Ahmedabad. On the 12th June 1897 the District Magistrate passed [illegible] perty should be restored to the persons from whose possession it was taken. The District Magistrate subsequently reversed this order as being erroneous, and passed a fresh order on the 3rd August 1897, directing the property to be delivered up to the Political Superintendent of Palanpur. *Held* that the City Magistrate had no authority to issue a search [illegible] Code of Criminal Proce- [illegible] warrant [illegible] or other [illegible] Magis [illegible] duction of the articles seized was necessary or desirable. *Held* also that the search warrant being illegal and *ultra vires*, the subsequent orders relating to the detention and delivery of the property seized were also illegal and unjustifiable. IN RE HARILAL BUCH [I. L. R., 22 Bom., 949

WARRANT-CASE

See PARDANASHIN WOMEN [I. L. R., 21 Calc., 588

WARRANT OF ARREST

	Col.
1. CIVIL CASES	9450
2. CRIMINAL CASES	9453

See ASSAULT ON PUBLIC SERVANT [I. L. R., 26 Calc., 630

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION [I. L. R., 25 Calc., 20
L. R., 24 I. A., 187

See MALICIOUS PROSECUTION [I. L. R., 10 Bom., 485

WARRANT OF ARREST—*continued*

See PENAL CODE, s. 332. [I. L. R., 18 All., 240

See WITNESS — CIVIL CASES — DEFAULTING WITNESSES . 13 W. R., 324
[9 W. R., 350
5 Mad., 104
I. L. R., 17 All., 277

See WRONGFUL CONFINEMENT [I. L. R., 10 Bom., 72

——— Execution of—

See WITNESS — CRIMINAL CASES — SUMMONING WITNESSES [I. L. R., 24 Calc., 320

——— Illegal issue of—

See PENAL CODE, s. 183. [I. L. R., 24 Calc., 320

——— not in legal form

See PENAL CODE, s. 186. [I. L. R., 23 Calc., 896

See PENAL CODE, s. 332. [I. L. R., 18 All., 240

——— of Governor General in Council

See BENGAL REGULATION III OF 1818 [6 B. L. R., 392, 459
9 B. L. R., 36

See HABEAS CORPUS. [6 B. L. R., 392, 459

1. CIVIL CASES.

1. ——— Absence of warrant — *Discharge from custody of Sheriff*—The Court will discharge a prisoner from custody when the jailor holds no warrant for his detention, although he has been properly in the custody of the Sheriff. IN THE MATTER OF SHAH SAHIB . 1 Ind. Jur., N. S., 19

2. ——— Informality of warrant—*Application for discharge—Civil Procedure Code, 1859, s. 273—Delay in bringing up prisoner*—B M and several other prisoners in the custody of the Sheriff of Calcutta for debt, without having been brought up to have an order for their allowance made, on being produced for that purpose by the Sheriff, applied for their discharge under s. 273 of Act VIII of 1859. Preliminary objections were taken to the validity of the warrants on which the Sheriff arrested them, on the grounds that the time for execution was not specified in them; and that, even had they been originally valid, their authority had expired, owing to the delay in bringing up the prisoners. Both objections were overruled. *Held* that a mere informality in a warrant, such as the omission of the time for execution, only renders it irregular, and does not invalidate it; that advantage having been taken of such irregularity to prejudice the prisoner affords grounds for an application to the Court to set the warrant aside; and that a mere delay in bringing the prisoner before the Court after his arrest, if not for a

WARRANT OF ARREST—*continued.*

1. CIVIL CASES—*continued.*

considerable period, does not render his detention illegal. IN RE BHOLANAUTH MULLICK [Bourke, O. C., 98

3. ———— Form of warrant—*Sufficiency of warrant.*—Where a person had been taken in execution under a *ca. sa.* directed to the Sheriff under the old procedure, it was held to be sufficient to empower the jailor to detain him. The words "ordinary civil jurisdiction" are only used to distinguish the civil from the criminal jurisdiction. IN RE ANWAR BISWAS . . 1 Ind. Jur., N. S., 106

4. ———— Writ of Calcutta Small Cause Court, Form of—*Act XII of 1865—Fixing subsistence-money.*—A writ of the Calcutta Small Cause Court commanding its "Bailiff to take the body of *A*, and have him before the Court on the ——day of—— to satisfy *B* in the sum of—— debt and costs, ordered and decreed by the said Court on the——day of——to be paid to the said *B* with costs of execution, and by virtue thereof to take and convey the said *A* to the common jail of the said Court, there to be detained in safe custody for——weeks, or until he shall sooner perform the said order of the Court" is in point of form a sufficient warrant to the jailor to receive and detain *A*, notwithstanding Act XII of 1865. It was not necessary, in the case of commitment of a debtor to prison by the Calcutta Court of Small Causes, to bring him in the first instance before the Court, as under the provision of Act VIII of 1859, in order to have his subsistence-money fixed. IN THE MATTER OF MEER NAWAUB [1 Ind. Jur., N. S., 315

5. ———— Warrant directed to Nazir—*Arrest of judgment-debtor—Indorsement to peon—Civil Procedure Code, 1882, s. 343—Indorsement of particulars of arrest by Naib Nazir.*—Where a warrant issued by a Subordinate Court, directing the Nazir to arrest a judgment-debtor in execution of a decree, was entrusted by the Nazir to a subordinate for execution by indorsing his name upon it,—*Held* that there is nothing in the Civil Procedure Code to prohibit a Nazir from authorizing a deputy to execute a warrant of arrest for him, and that his indorsement must be regarded as *primâ facie* evidence of the authority of the person to whom the warrant is delivered to execute it. *Held* also that it is most desirable, when the Nazirs of the Subordinate Courts delegate the duty of executing warrants of arrest, that they should confer the authority in more clear and explicit terms than are expressed by a mere indorsement, and that they should be careful in selecting proper persons to discharge that duty, bearing in mind, as far as circumstances permit, the position and caste of the party to be arrested, so as to avoid, through the medium of Court process, subjecting any such party to personal indignity or offence. *Held* further that it is important that the person chosen should be made acquainted with the contents of the warrant in order that he may be able to inform the judgment-debtor at whose suit and for what amount he is being taken into custody. Where a warrant for the arrest of the judgment-debtor had been executed, and an indorsement thereon, professedly under s. 343 of the Civil Procedure Code, was irregularly made by the Naib Nazir, he not having been "the officer entrusted with the execution of the warrant,"—*Held* that such irregularity did not invalidate the arrest. ABDUL KARIM *v.* BULLEN . I. L. R., 6 All., 385

6. ———— Irregularity in warrant—*Warrant of arrest in execution of a decree only initialled by proper officer—Civil Procedure Code, 1882, ss. 2, 251.*—A warrant issued for the arrest of a debtor under the provisions of s. 251 of the Civil Procedure Code was initialled by the Munsarim of the Court, sealed with the seal of the Court, and delivered to the proper officer for execution. The debtor forcibly resisted the officer, and was tried and convicted, under s. 353 of the Penal Code, of assaulting a public servant in the execution of his duty as such. In revision, it was contended, with reference to the requirements of s. 251 of the Civil Procedure Code, that the warrant of arrest, having been initialled only, was bad, and the officer could not legally execute it, and consequently no offence under s. 353 of the Penal Code had been committed. *Held* that this contention could not be allowed, and although it was proper that the person signing a warrant should write his name in full, it could not be said that because the signature was confined to the initials of the name, it was not the duty of the officer to execute the warrant. QUEEN-EMPRESS *v.* JANKI PRASAD. . . . . I. L. R., 8 All., 293

7. ———— Validity of warrant—*Liability of Nazir—Escape of judgment-debtor.*—The plaintiff sued out a warrant for the arrest of his judgment-debtor on the 4th December 1876. The warrant was lodged with the Nazir on the 16th December and was to be in force till the 4th January 1877. On the 22nd December 1876 the Nazir was informed that the judgment-debtor was already in the civil jail under a writ of execution issued by another creditor. The Nazir then returned the warrant to the Subordinate Judge who had issued it. On the 29th December the Subordinate Judge again sent it to the Nazir's office, where it was duly received by the Nazir's karkun (defendant No. 2). This fact was not reported by the karkun to the Nazir (defendant No. 1) until the 4th January 1877. On the 1st January 1877 the judgment-debtor's debt was paid by Government, and he was released in honour of Her Majesty's assumption of the title of Empress of India. The judgment-debtor thereupon left the district and could not be found, and the plaintiff's warrant remained unexecuted. The plaintiff sued the Nazir and his karkun for allowing his judgment-debtor to escape. *Held* that the Nazir ought not to have sent the warrant back to the Subordinate Judge, and that there was no necessity for a fresh order on it until the time for which it had to run had expired. *Held* also that, according to Act VIII of 1859, as it stood at the end of 1876 and until October 1877, the batta for the maintenance of a debtor could not become payable until he was arrested and brought before the Court

WARRANT OF ARREST—*continued*

1. CIVIL CASES—*concluded.*

and the latter made the order for his committal to the civil jail KASTURCHAND *v* RAVJI SADASHIV [I. L. R., 4 Bom., 65

8. —— **Warrant not exhausted if on one occasion the serving officer is unable** [illegible] applications for execution, applied on the 4th of August 1897 for a warrant for the arrest of the judgment-debtor That application was granted, but the peons sent to arrest the judgment debtor reported that he had concealed himself, and the Court in consequence struck off the application for execution On the 29th of November 1897 the decree-holders again applied for the arrest of the judgment debtor, but that application also was struck off without the arrest having been made [illegible] executed, having regard to s. 230 of the Code of Civil Procedure, it was *held* that the warrant of arrest issued on the decree holders' application of the 4th of August 1897 still subsisted and ought to be executed *Anwar Ali Khan* v *Phul Chand, Weekly Notes, All., 1898, 137,* followed JIT MAL *v* JWALA PRASAD I. L. R., 21 All., 155

2. CRIMINAL CASES

9. ——— **Arrest in pending case**—*Power of Magistrate—Criminal Procedure Code, 1861, s 68* — S 68 of the Code of Criminal Procedure [illegible] [10 W. R., Cr., 30

10. ——— **Warrant on non-appearance to summons**—*Lessee of tolls—Disobedience of summons to appear—Undertaking not to sue—A,* the lessee of a toll, was in arrear to Government in respect of the rent The Magistrate issued a summons to him, whereby it was recited that a plaint had been preferred against him (*A*) for not paying *the sum of R2-2 for arrears of rent,* and *A* was summoned to appear before the Magistrate to answer the charge *A* did not appear on the day appointed, but had an application presented for postponement of the demand for arrears of rent, on the grounds therein stated. On the following day the Magistrate passed the following order "Whereas the debtor, defendant, has not appeared in person, the summons has not been obeyed; therefore it is ordered that [illegible] a ... taking not to take legal proceedings for anything done under the order or warrant IN THE MATTER OF HARKA BIHARI GHOSE [2 B. L. R., A. Cr., 17 : 11 W. R., Cr., 26

WARRANT OF ARREST—*continued*

2. CRIMINAL CASES—*continued.*

11. —— **Issue of warrant**—*Complaint on oath—Report of police officer—Criminal Procedure Code, 1869, ss 68 and 155* — In cases in which the police cannot arrest without a warrant, a warrant cannot legally be issued by a Magistrate except on a complaint made on oath (or under s 68 of the Criminal Procedure Code), whether such Magistrate is authorized to entertain cases either on complaint directly to himself or on the report of a police officer REG *v* JAFAR ALI 8 Bom., Cr., 113

12. —— ——— *Arrest on report of policeman for offence for which arrest without warrant might be made* — Where a policeman in whose sight a theft was committed arrested the thief, and being himself unable to take or send the accused to a Magistrate, sent a report, on which the Magistrate issued a warrant,—*Held* that, under these circumstances the accused was legally brought before the Magistrate REG *v* MAHIPYA VALAD BOMYA MAHAR . . 5 Bom., Cr., 90

13. ——— *Validity of warrant—Criminal Procedure Code (X of 1872) s 157—Magistrate out of jurisdiction—Extradition* —It was not essential to the validity of a warrant issued under s. 157 of Act X of 1872 that the Magistrate issuing it should be, at the time he issues it, within the local limits of his jurisdiction He might issue such a warrant from a place in foreign territory REG *v*. LOCHA KALA [I. L. R., 1 Bom., 340

14. **Procedure on warrant**—*Act XII of 1867* —When a prisoner was arrested by the Sheriff under a writ of *ca. sa.*, it was necessary to bring him before the Court without delay, under s. 14 of Act XII of 1867 IN RE RAMCOOMAR DUTT 2 Ind. Jur., N. S., 310

15 —— **Operation of warrant**—*Detention of prisoner* — The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate MUTHOORA NATH CHUCKERBUTTY *v* HEERA LALL DOSS . 17 W. R., Cr., 55

A Magistrate therefore is not at liberty to retain an accused person in custody, except upon a proper remand made after taking sufficient evidence given on oath or solemn affirmation IN THE MATTER OF ZUHURUDDEEN HOSSEIN 25 W. R., Cr., 8

16. *Warrant issued to unofficial person—Criminal Procedure Code (Act X of 1872), s 161—Act XXV of 1861, s 77* —Under s. 77 of the Criminal Procedure Code, a Magistrate ought not to issue a warrant to an unofficial person, except when he is without the assistance of competent police officers and unless the urgency is imminent. The force of a warrant of arrest is at an end when the prisoner is brought before the Magistrate, and the prisoner cannot lawfully be committed to prison or remanded without sufficient grounds, and in the absence of evidence there can be no grounds. IN THE MATTER OF THE PETITION OF SURENDRONATH ROY QUEEN *v* SURENDRONATH ROY [5 B. L. R., 274 : 13 W. R., Cr., 27

WARRANT OF ARREST—*continued.*

2. CRIMINAL CASES—*continued.*

17. ——— *Criminal Procedure Code (Act XXV of 1861), s. 68—Act X of 1872, ss. 142 and 150—Detention of accused.*—A warrant issued under s. 68, which was a warrant of arrest as described under s. 76 (Form B), is only for the purpose of bringing an accused person before the Magistrate. It was not a warrant for commitment, and did not authorize the detention of a person longer than is necessary for his production before the Magistrate. To detain him further, there must be a fresh warrant under s. 222, charging the prisoner with some offence, on evidence taken on oath or affirmation, and in the presence of the accused. IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR

[4 B. L. R., Ap., 1 : 13 W. R., Cr., 1

18. ——— *Detention of accused—Order sanctioning detention for indefinite period—Remand of accused.*—*Held* that the order of a Magistrate sanctioning the detention by the police of an accused person for an indefinite period is illegal. At the expiration of twenty-four hours from the time of arrest, the accused must be brought before a Magistrate, who could then remand for a period not exceeding fifteen days under s. 224 of the Criminal Procedure Code, 1861. No remand without a hearing can last for a longer period. REG. *v.* SURKYA VALAD DHAKU . . 5 Bom., Cr., 31

19. ——— Form of warrant—*Omission to seal warrant—Criminal Procedure Code, 1869, s. 76—Requisites of good warrant.*—A warrant issued under s. 76 of the Code of Criminal Procedure should be stated, should describe the person to be apprehended under it with reasonable particularity, so that there may be no difficulty in establishing his identity, and should be subscribed with the name and full official title of the Magistrate issuing it. Where a warrant was defective in all the above particulars, the prisoner apprehended under it was released by the High Court. IN RE HASTINGS . 9 Bom., 154

20. ——— *Form of endorsement on warrant.*—An endorsement on a warrant under s. 79 of the Code of Criminal Procedure, should be regularly made by name to a certain person in order to authorize him to make the arrest. DURGA TEWARI *v.* RAHMAN BUKSH . 4 C. W. N., 85

21. ——— *Act XIII of 1856, s. 58—Error in warrant not affecting conviction.*—A warrant issued under s. 58 of Act XIII of 1856 should be addressed to some one or more inspectors, and not generally to "all constables and peace officers." Where a warrant in the latter form was executed under the direction of an inspector, it was held that the error in the form of the warrant was merely an error of procedure, and did not affect the validity of the conviction, under s. 57, of persons apprehended in pursuance of the warrant so executed. REG. *v.* NANA MOROJI. IN RE MADHAV MORAR

[8 Bom., Cr., 1

22. ——— *Warrant not containing specification of offence.*—A warrant which did not specify a punishable offence, and which had been issued upon a statement not sufficient to make out any offence, quashed. IN RE BIDHUMUKHI DEBI . . . . 6 B. L. R., Ap., 129

S. C. BIDHOOMOOKHEE DABEE *v.* SREENATH HALDAR . . . . 15 W. R., Cr., 4

23. ——— Informality in warrant—*Criminal Procedure Code, 1869, s. 404—Power of High Court—Irregularity in process of arrest and attachment.*—The High Court was not empowered to interfere under the provisions of s. 404 of the Criminal Procedure Code, 1869, until there has been a judicial proceeding by a Magistrate. A person complaining of irregularity of process issued for his arrest and for the attachment of his property, before applying to the High Court under s. 404 of the Criminal Procedure Code, should make application to the Magistrate issuing such process for his discharge and the release of his property, on the ground of the informality of the warrants. QUEEN *v.* BISHESHUR PERSHAD

[2 N. W., 441 : Agra, F. B., Ed. 1874, 236

24. ——— Mode of arrest in foreign territory or out of jurisdiction—*Warrant of arrest for contempt of Court.*—The High Court of Bombay will not send a special bailiff into the territories of the Gaikwar of Baroda to arrest a defendant who has been guilty of a contempt of Court, but the Court will send a special bailiff for such purpose beyond the local limits of the High Court to a place within the Presidency of Bombay. HARIVALLABHDAS KULLIANDAS *v.* UTAMCHAND MANIKCHAND

[7 Bom., O. C., 172

25. ——— *Warrant to arrest and imprison—Form of warrant—Service of warrant—Irregularity—Defect in warrant—Foreigners, Arrest of—Act III of 1864, s. 3—Criminal Procedure Code, s. 491.*—On the 3rd July 1894, certain foreigners, resident in Bombay, having been arrested by the police and sent to jail under warrant issued under ss. 3 and 4 of Act III of 1864, they applied to the High Court and obtained a rule *nisi* under s. 491 of the Criminal Procedure Code (Act X of 1882) and under Stat. 31 Car. II, c. 2 (Habeas Corpus Act), calling on the Superintendent of the Jail to show cause why they should not be set at liberty. A separate warrant was issued in the case of each of the foreigners in question; and all were in the same form. The warrant directed the person whose name appeared in it forthwith to "remove himself from British India by sea, and it further contained the following words: "All officers to whom this order may be communicated are required to see that it is duly obeyed, and, in the event of its being infringed, to apprehend and detain the said (   ) in safe custody in the jail of Bombay under s. 4 of the said Act, until he shall be lawfully discharged therefrom." Each warrant was signed by the Secretary to Government, and was directed to the Commissioner of Police and to the Superintendent of the Jail. *Held* that the warrants were not valid warrants for the following

WARRANT OF ARREST—*concluded*

2. CRIMINAL CASES—*concluded.*

reasons: (1) they were irregular in that they contained an order to the person named in them to do a certain thing with a further conditional order for his imprisonment in the event of his not doing it. There ought to have been a separate order to each prisoner to remove himself from British India, which order should have been duly served upon him. Then, in case of his refusal or neglect to comply with its terms, there ought to have been a further order by the Governor in Council authorizing his arrest and detention in jail. (2) The persons named in them were not indicated with sufficient certainty and particularity. The warrants contained no description of the persons against whom they purported to be directed, and did not give their place of residence. (3) By reason of the direction contained in them that the persons named in them were to remove themselves from British India by sea to the places mentioned in the warrant. The particular route to be specified under s. 3 of Act III of 1864 is intended to be a route in British India, and not a route beyond the high seas. The Government has no jurisdiction to direct a person's movements at sea beyond the limits of three miles from the shore. (4) *Per* STARLING, J.—The warrants were also defective, inasmuch as they bore no seal. ALTER CAUFMAN *v.* GOVERNMENT OF BOMBAY

[I. L. R., 18 Bom., 636

26. *Warrants issued under Act XIII of 1859—Execution outside jurisdiction—Criminal Procedure Code (1882), s. 83—Magistrate, Jurisdiction of—Breach of contract of service.*—S. 83 of the Criminal Procedure Code applies to warrants issued under s. 1 of Act XIII of 1859, and consequently such warrants may be executed outside the local jurisdiction of the Magistrates issuing them. QUEEN-EMPRESS *v.* KATTAYAN

[I. L. R., 20 Mad., 235

QUEEN-EMPRESS *v.* MUTHAYYA

[I. L. R., 20 Mad., 457

GAURI SHANKAR *v.* MATA PRASAD

[I. L. R., 20 All., 124

WARRANT OF ATTORNEY.

1. ———— Extent and operation of warrant—*Civil Procedure Code, 1859, ss. 17 and 49—Acceptance of service and appearance—Act XX of 1862, s. 7.*—A warrant of attorney to the attorney of a defendant to receive a declaration or plaint, etc., in any action or suit to be brought for the recovery of certain moneys, and to confess the same action or suit, or else to suffer or consent to a judgment or decree in the said action or suit by default, or in any other way to pass or be pronounced against the defendant, empowered the attorney to accept service and appear for the defendant within the meaning of ss. 17 and 49 of Act VIII of 1859. *Held* that s. 7 of Act XX of 1862 referred only to warrants of attorney for the entering up of judgments in the High Court which were in existence before the 1st July 1862. KHALUT CHUNDER GHOSE *v.* SARODASOONDERY DOSSEE

[Bourke, O. C., 244

2. ———— Limitation Act, 1859—*Entering up judgment.*—The statute of limitation is no answer to a rule *nisi* to enter up judgment on a warrant of attorney. SOOJAN MULL *v.* HYDER JUNG BAHADOOR . . 1 Ind. Jur., O. S., 58

WARRANT OF COMMITMENT

———— Signature of Magistrate—*Criminal Procedure Code 1872, s. 303.*—The signature of a Magistrate to a warrant of commitment under s. 303 of the Code of Criminal Procedure, 1872, should not be affixed by a stamp. SUBRAMANAYA *v.* QUEEN . . . I. L. R., 6 Mad., 396

WARRANT OF EXECUTION.

1. ———— Executing a warrant for attachment of property—*Penal Code (Act XLV of 1860), ss. 353, 147, 114—Assaulting a public servant in the discharge of his duty—Contents of the warrant—Form of the warrant—Non-production of evidence as to terms of warrant—Validity of warrant, and of conviction had upon it.*—A warrant for the attachment of whatever property of a judgment debtor which the officer executing it might find on search, which did not describe the area of the search and was different from the form prescribed by the Code of Civil Procedure, Sch. IV, No. 136 was not a valid warrant. In the absence of any evidence as to the terms of the warrant either by the production of the original or in the form of secondary evidence a conviction for resisting or obstructing a public officer in the discharge of his duty, etc., the execution of a distress-warrant for attachment of property, cannot stand. CHUNDER COOMAR SEN *v.* QUEEN-EMPRESS 3 C. W. N., 605

TAFAZZUL AHMED CHOWDHRY *v.* QUEEN-EMPRESS

[I. L. R., 26 Calc., 630

2. ———— Extension of time for operation of warrant—*Act X of 1859, s. 68—Jurisdiction.*—Where a warrant of execution under Act X of 1859, s. 68, was extended for four days after a particular day, when the original warrant was not sixty days old, in order that more moveable property might be pointed out,—*Held* that, until the time so extended had elapsed, an order for sale of immoveable property was without jurisdiction. NABI BAX *v.* DIDAR BAX SHAH

[3 B. L. R., A. C., 10: 11 W. R., 326

3. ———— Return of warrant—*Public servant—Resistance to public servant—Penal Code, s. 183—Civil Procedure Code, 1859, s. 251.*—A person was convicted under s. 183 of the Penal Code for offering resistance to the attachment of property by a public servant. The offence was committed on the 4th of February 1863, but the warrant under which the public servant acted was returnable on or before the previous day. *Held* that the conviction was bad. IN THE MATTER OF

WARRANT OF EXECUTION—*concluded.*

THE PETITION OF ANAND LALL BERA. ANAND LALL BERA *v.* EMPRESS

[I. L. R., 10 Calc., 18: 13 C. L. R., 209

4. ——— Irregularity in warrant—*Civil Procedure Code, 1859, s. 222—Civil Procedure Code, 1877, 1882, s. 251.*—An execution-sale of the right, title, and interest in land was set aside by the Court, on the ground that the warrant for the execution of the decree and order of attachment of the property sold had not been signed by the Judge, but by the Munsarim of the Court; and at a second sale the property was sold to other purchasers, who, as well as the judgment-debtor, were sued by the purchaser at the first sale for a declaration of his right to have the first sale confirmed. The High Court having held that, with reference to s. 222 of Act VIII of 1859, the first sale had been rightly set aside, an appeal to the Judicial Committee was dismissed with costs. RAM DAYAL *v.* MAHTAB SINGH . . . . I. L. R., 7 All., 506

WARRANTY, BREACH OF—

See CHARTER PARTY . 8 B. L. R., 544

See CONTRACT—BREACH OF CONTRACT.
[14 B. L. R., 180 : 23 W. R., 136
I. L. R., 13 Calc., 237
L. R., 13 I. A., 60

See CONTRACT ACT, s. 78.
[I. L. R., 4 Calc., 801

See RIGHT OF SUIT—MISREPRESENTATION.
[I. L. R., 24 Bom., 166

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY.

WARRANTY OF TITLE.

See CASES UNDER SALE IN EXECUTION OF DECREE—PURCHASERS, TITLE OF—GENERALLY.

See SALE IN EXECUTION OF DECREE—SETTING ASIDE SALE—RIGHTS OF PURCHASERS . I. L. R., 2 Bom., 258
[I. L. R., 17 Mad., 228

See CASES UNDER VENDOR AND PURCHASER—BREACH OF WARRANTY.

See CASES UNDER VENDOR AND PURCHASER—CAVEAT EMPTOR.

WASHERMAN.

See MADRAS TOWNS IMPROVEMENT ACT, 1871, s. 1 . I. L. R., 1 Mad., 174

See WILL—CONSTRUCTION.
[9 B. L. R., Ap., 4

WASTE.

See CASES UNDER HINDU LAW—ALIENATION—ALIENATION BY WIDOW—SETTING ASIDE ALIENATIONS AND WASTE.

WASTE—*concluded.*

See HINDU LAW—REVERSIONERS—POWERS OF REVERSIONERS TO RESTRAIN WASTE, ETC.—WHO MAY SUE.
[I. L. R., 6 Calc., 198
6 Moore's I. A., 433
I. L. R., 9 Calc., 817
Marsh., 622

See LANDLORD AND TENANT — FORFEITURE — BREACH OF CONDITION.
[I. L. R., 10 Mad., 351
I. L. R., 22 Mad., 39

See LIMITATION ACT, 1877, ART. 125 (1859, s. 1, CL. 16) . 7 B. L. R., 131

——— by mortgagee in possession.

See MORTGAGE—ACCOUNTS.
[I. L. R., 15 Mad., 290

1. ——— Limitation—*Allegation of waste—Prayer for protection from contemplated waste.—Held per* PHEAR, *J.*, that where a suit was one to prevent contemplated waste, it was not barred by lapse of time. GROSE *v.* AMIRTAMAYI DASI
[4 B. L. R., O. C., 1 : 12 W. R., O. C., 13

BISWANATH CHUNDER *v.* KHANTAMANI DASI
[7 B. L. R., 131

2. ——— Liability for waste—*Hindu widow; liability for waste committed by her husband as administrator.*—In a suit against a widow individually, and not in her representative capacity, to recover plaintiff's share of property alleged to have been in her possession, the suit being one wherein defendant was charged with devastation in respect of such property only,—*Held* that defendant was not liable in that suit to be made answerable out of her husband's assets for any devastation which he might have committed. STAVES *v.* DIAS
[10 W. R., 444

WASTE LANDS.

See LANDLORD AND TENANT—MIRASIDARS.
[I. L. R., 1 Mad., 205

See ONUS OF PROOF — LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 9 Mad., 175

See SETTLEMENT—EVIDENCE OF SETTLEMENT . . I. L. R., 26 Calc., 792

See SETTLEMENT—RIGHT TO SETTLEMENT.
[4 Mad., 429

See SETTLEMENT—SUBJECTS OF SETTLEMENT . . . 1 Mad., 12, 407

See VALUATION OF SUIT—SUITS—WASTE LANDS, SUIT FOR . 7 W. R., 349

——— Grant of—

See MORTGAGE—FORM OF MORTGAGES.
[I. L. R., 21 Calc., 882
L. R., 21 I. A., 96

——— made cultivable.

See ONUS OF PROOF—LIMITATION AND ADVERSE POSSESSION.
[I. L. R., 24 Calc., 256

WASTE LANDS—*continued*

—— – Right of village to pasturage on—

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS BOMBAY
[I. L. R., 21 Bom., 684

1. ——— Presumption from land lying waste—*Evidence as to possession*—The fact of land lying waste does not of itself show that no one is in possession. MAHOMED ALI *v.* SHUBUM ALI
[8 W. R., 423

2. — Ownership of waste land—*Presumption as to possession*—Where land is waste and there is no visible sign of occupation the possession must be taken to go with the right and the right is *primâ facie* in the zamindar of the estate to which the waste land belongs. WOODWANT MAHTOON *v.* HUNOOMAN PERSHAD SINGH
[22 W. R., 419

3. ——— *Ownership of waste land not belonging to any private person*—Unsettled and unoccupied waste land not being the property of any private owner must belong to the State. PROSUNNO COOMAR ROY *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL I. L. R., 26 Calc., 792
[3 C. W. N., 695

4. ——— Possession of waste land—*Limitation—Presumption—Proof of title*—There may be such possession of waste lands as to protect a suit from being barred by limitation; and where the question of possession is doubtful a presumption will arise in favour of the party who proves title. MAHOMED BASSIR *v.* KUREEM BUKSH
[11 W. R., 268

5. ——— *Possession, presumption of, from evidence of title*—In disputes as to the right to possession of waste and jungle lands it is only in cases where neither party has exercised any acts of ownership over the lands in question that the Court may resort to evidence of title and presume that the party proved to have title has also possession. RAM BANDHU *v.* KESU BHATTU
[5 C. L. R., 481

6. ——— *Title to uncultivated or jungle lands—Adverse possession—Limitation—Acts of ownership*—If adverse possession for a sufficiently long time is proved the title of a person to uncultivated or jungle land may be barred by limitation in the same manner and to the same extent as in the case of cultivated land; the evidence of possession being the exercise of such acts of ownership as would ordinarily be exercised over property of that nature. MITTERJEET SINGH *v.* RADHA PERSHAD SINGH . 23 W. R., 363

See WATSON *v.* GOVERNMENT
[B. L. R., Sup. Vol., 182: 3 W. R., 73

WASTE LANDS—*continued*

mazah resisted the claim on the ground that they had built wells and water-courses on the land and had a right also to use it as a threshing-floor and for stacking cowdung. *Held* that the defendants having acquired no right adverse to the plaintiff as owners by prescription or otherwise in the land, their right of use could only be as licensees of the plaintiff; and although he could not interfere with their right to the wells which were works of a permanent character, and on which the defendants had incurred expense, he could revoke the license as to the other use claimed of the land, and his claim to build the house should therefore be decreed. LAND MORTGAGE BANK OF INDIA *v.* MOTI
[I. L. R., 8 All., 64

8. ——— *Rights of zamindar in respect of waste lands—Provisions of wajib-ul-arz as to rights of pasturage*—*Held* that a general provision contained in a wajib-ul-arz that village cattle might graze on the waste land of the village could not be construed in the absence of any definite covenant to that effect as depriving the zamindar of his right to reclaim such waste lands. RAM SARAN SINGH *v.* BIRJU SINGH
[I. L. R., 10 All., 172

9. Act XXIII of 1863, s. 5—*Suit to contest sale*—Where the Collector failed to give notice of his intention to dispose of the estates it was not incumbent on the plaintiff to contest the sale within the period prescribed by s. 5, Act XXIII of 1863. HIMMUT SINGH *v.* COLLECTOR OF BIJNOUR
[2 Agra, 258

10. ——— *Act to reclaim waste lands—Suit to contest award by Board of Revenue—Extension of time—Institution of suit*—The Court cannot extend the period of thirty days allowed by s. 5, Act XXIII of 1863, for preferring a suit to contest an award by the Board of Revenue. The filing of a vakalatnama is not an institution of such a suit. TARANATH DUTT *v.* COLLECTOR OF SYLHET
[5 W. R., Waste Land Court Ref., 1

11. ss. 8, 18—*Suit for possession—Statute, Interpretation of*—Where an Act expressly takes away one particular remedy which would otherwise have been open for enforcing a right of property, or in any other particular interferes with proprietary rights, but does not in express words or by necessary implication declare that those rights shall cease, the method of interpretation which ought to be adopted is to give effect to the Act exactly so far as its words extend, and no further. There is nothing in Act XXIII of 1863 to prevent a person who has a good title and has throughout been in possession, or who has a good title and at any time succeeds in peaceably getting possession and is not ousted in a possessory suit, or who for any other reason is in the advantageous position of a defendant, from defending his rights, so as to be avoiding any sale which the Government may have professed to make under the Waste Lands Act. *Quære*: Whether the terms of the Act are not sufficiently satisfied by making it apply to waste lands of Government, and by understanding the claims and objections mentioned

WASTE LANDS—*concluded.*

in the Act as claims in respect of Government land, and objections with the same limitation. KRISTO CHUNDER DASS *v.* STEEL I. L. R., 12 Calc., 279

12. ——— s. 18—*Suit for compensation for land wrongly sold as waste.*—A purchaser of land sold as waste land under Act XXIII of 1863 cannot be compelled to grant a pottah to a person alleging himself to have been in occupation of the land before the sale. If the claimant has omitted to come in in due time to stay the sale, and the land has actually been sold, his only remedy is by a suit under s. 18 for compensation, making the Collector a defendant. MAGUN POLLAN *v.* MONEY [7 W. R., 474

WATER.

——— Liability for damage done by—

See EMBANKMENTS. [I. L. R., 3 Calc., 776

——— Rights concerning—

See CASES UNDER INJUNCTION—SPECIAL CASES—OBSTRUCTION OR INJURY TO RIGHTS OF PROPERTY—WATER.

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

See CASES UNDER RIGHT TO USE OF WATER.

——— Right to use of—

See EASEMENT . I. L. R., 18 Mad., 320

See MADRAS FOREST ACT, s. 10. [I. L. R., 20 Mad., 279

WATER-CESS.

See CESS . I. L. R., 10 Mad., 282

See MADRAS IRRIGATION CESS ACT, s. 1. [I. L. R., 12 Mad., 407
I. L. R., 19 Mad., 24

WATER-COURSE.

——— Obstruction of—

See EASEMENT . I. L. R., 23 Bom., 506

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—DAMAGES. [I. L. R., 18 Mad., 28
I. L. R., 20 Bom., 283

——— Right to use of—

See CASES UNDER PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER.

See CASES UNDER RIGHT TO USE OF WATER.

WATER-SUPPLY.

——— Causing diminution of—

See MISCHIEF . I. L. R., 1 Mad., 262
[I. L. R., 10 Bom., 183

WEIGHTS AND MEASURES.

——— Fraudulent use of—*Penal Code, s. 266—Fraudulent intention.*—The mere possession of weights in excess of the authorized standard will not support a conviction under s. 266 of the Penal Code; a fraudulent intent must be charged and proved. REG. *v.* DAMO DHAR DALJI [1 Bom., 181

GOVERNMENT *v.* KANGALEE MUDUK [18 W. R., Cr., 7

WELL.

——— Right to use—

See PRESCRIPTION—EASEMENTS—RIGHTS CONCERNING WATER. [I. L. R., 20 Mad., 389

WHARFAGE.

See BILL OF LADING. [I. L. R., 4 Calc., 736
I. L. R., 5 Calc., 477
I. L. R., 7 Bom., 386

See INTERPLEADER SUIT. [I. L. R., 18 Bom., 231

WHARFINGER.

See BILL OF LADING. [I. L. R., 4 Calc., 736

WHIPPING.

See CASES UNDER SENTENCE—WHIPPING.

1. ——— Juvenile offenders—*Act VI of 1864, s. 3.*—S. 3 of Act VI of 1864 (the Whipping Act) applies to juvenile as well as to adult offenders. REG. *v.* KUSA VALAD LAKSHMAN [7 Bom., Cr., 70

2. ——— *First conviction of adults—Substituted punishment.*—In the case of adults on a first conviction, or in the case of juvenile offenders whether for a first offence or otherwise, whipping can only be in lieu of, and not added to, any other punishment. QUEEN *v.* ABDOOL [W. R., 1864, Cr., 38

QUEEN *v.* KANTIRAM . . 1 W. R., Cr., 24

QUEEN *v.* TONAOKOOH . . 2 W. R., Cr., 63

QUEEN *v.* AMARUT . . 4 W. R., Cr., 20

3. ——— *Whipping Act (VI of 1864), s. 2—Whipping in lieu of fine or other punishment under the Penal Code (Act XLV of 1860).*—When an accused person is sentenced to whipping under s. 2 of the Whipping Act (VI of 1864), the punishment of fine or imprisonment or both cannot be legally inflicted under the Penal Code in addition to the whipping. The word "punishment" in s. 2 of the Act means the total of punishments awardable under the Penal Code. QUEEN-EMPRESS *v.* DAGADU . I. L. R., 16 Bom., 357

4. ——— *Act VI of 1864.*—Under Act VI of 1864 (the Whipping Act), a juvenile

WHIPPING—*continued*

offender means a person under the age of sixteen years. REG v. MUHAMMAD ALI VALAD ABDUL ALI [8 Bom., Cr., 9

5. —————— *Act XI of 1864, ss 5, 10—Criminal Procedure Code, s 392*—By the term "juvenile offender" in s 5 Act VI of 1864 (Whipping Act), is meant an offender under the age of sixteen years *Reg v Muhammad Ali, 8 Bom, Cr, 9*, referred to. EMPRESS v DIN ALI [I. L. R., 6 All., 482

6. Sentence of whipping when allowable—*Act VI of 1864 s 4—Offence after previous conviction*—The punishment of whipping under s 4 Act VI of 1864, can only be inflicted on a second conviction of a person who, having served a sentence of imprisonment, again commits a crime QUEEN v UDAI PATNAIK [4 B L. R., A. Cr., 5: 12 W. R., Cr., 68

7. —————— *Offence after previous conviction—Previous conviction not shown*—On a reference by a Sessions Judge under s 434 of C— —al Procedure Code a sentence of whipping ... risonment in the ... Act VI of 1864 ... was not committed ... e SURYA BIN ... Bom., Cr, 38

REG v BABJI VALAD BAPU . 4 Bom., Cr, 5

8. —————— *Act VI of 1864 s 3—Second conviction for offence committed before first conviction*—S 3 of Act VI of 1864 (the Whipping Act) does not apply to cases in which the second conviction is for an offence committed previously to the first conviction REG v KUSA VALAD LAKSHMAN . . 7 Bom., Cr, 70

9. —————— *Previous conviction*—A sentence of whipping founded on a previous conviction of the prisoner is only warranted where the subsequent conviction is for the same specific offence as that in respect of which the previous conviction applied. ANONYMOUS 5 Mad., Ap, 1

ANONYMOUS . . . 5 Mad., Ap., 39

10. —————— *Theft in dwelling house—Act VI of 1864 s 3—Previous conviction of theft*—A prisoner convicted of "theft in a dwelling house" who has previously been convicted of "simple theft" is not thereby rendered liable to whipping, under Act VI of 1864 s 3 REG v CHANGIA VALAD SHUMIA . 7 Bom., Cr., 98

11. —————— *Act VI of 1864 s 7—Conviction of dishonestly receiving stolen property—Previous conviction for theft.*—P was convicted by a Magistrate of the first class of dishonestly receiving stolen property He confessed on his trial that he had twice previously been convicted of theft He was sentenced to be whipped to be rigorously imprisoned, and, on the expiration of the term of imprisonment to furnish security for good behaviour *Held* that the offence of theft not being the same offence as that of dishonestly receiving stolen property, the punishment of whipping was illegal. EMPRESS v PARTAB [I. L. R., 1 All., 666

12. —————— *Conviction of separate offences—"House-breaking to commit theft," and "theft"—Whipping Act, VI of 1864, s 2*—Where a prisoner convicted of "house-breaking in order to commit theft," and of "theft," both offences being portions of one continuous criminal act, was sentenced on the first head of charge to one ye ... under s 457 of the I ... receive ... Act (V ... not ill ... spirit ... GENU BIN AKU 5 Bom., ...

13. —————— *Act VI of 1864, s 7—Conviction of theft*—A sentence of whipping cannot with reference to Act VI of 1864 s 7, be passed on a conviction for theft under s. 379, Penal Code as the former section only provides for sentences of imprisonment for a term not exceeding three years QUEEN v FRAN CHUNDER DEY [21 W R., Cr., 40

14. —————— *Attempt at house-breaking with view to theft*—In the case of a conviction of attempting to commit house-breaking by night with intent to commit theft, a sentence of whipping was annulled as being illegal REG v YELLA VALAD PARSHIA 3 Bom., Cr., 37

15. —————— *Substitution of whipping for other punishment—Sentence—Theft*—Whipping may be substituted for any other punishment for the offence of theft in a dwelling house QUEEN v JUNGHOO KHAN . 3 W. R., Cr., 30

16. —————— *Act VI of 1864 s 7—Whipping in addition to other sentences*—A sentence of whipping passed on a person who is already under sentence of death, or transportation or penal servitude, or imprisonment for more than five years is illegal If the sentence of whipping precede instead of follow, the other sentence the passing of the latter sentence renders the infliction of the whipping illegal. ANONYMOUS [I. L. R., 1 Mad., 56

17. —————— *Act VI of 1864 —Power of Magistrate*—When a Magistrate in exercise of the powers conferred by s. 46 of the Criminal Procedure Code 1861, passed a cumulative sentence against a person convicted at one and the same time of two or more offences punishable under the Penal Code—*Held per* PEACOCK, C J., and PHEAR and SETON KARR, JJ., that he could not, in addition to the penalties prescribed by the Penal Code sentence the prisoner to whipping under Act VI of 1864; nor could he exceed twice the extent of his ordinary jurisdiction as defined by s. 22 of the Criminal Procedure Code 1861. *Held further per* SETON KARR, J., that in the case of hardened offenders, a Magistrate can award whipping in addition to

WHIPPING—*continued.*

the maximum of imprisonment which he is competent to award. *Held per* MACPHERSON and JACKSON, *JJ.*, that the Magistrate may in such case, in addition to awarding double the punishment which may be awarded for a single offence, award the punishment of whipping; but only one whipping can be awarded. NASSIR *v.* CHUNDER

[B. L. R., Sup. Vol., 951: 9 W. R., Cr., 41

RUTTUN BEWA *v.* BUHUR. JHOWLA *v.* BUHUR

[14 W. R., Cr., 7

18. ———— *Act VI of 1864—Penal Code, ss. 325, 342, 378—Criminal Procedure Code (Act XXV of 1861), s. 46—Cumulative sentences.*—Where the prisoner was convicted by the Magistrate of three distinct and separate offences, and was sentenced to a month's imprisonment for the offence of wrongful confinement under s. 342, six months' imprisonment for the offence of voluntarily causing grievous hurt under s. 325, and to whipping with twenty stripes for the offence of that under s. 378 of the Penal Code, it was held (KEMP and PHEAR, *JJ.*, dissenting) that the sentence was legal. Where a person is convicted at the same time of two or more offences punishable under the Penal Code,—*Held* (KEMP and PHEAR, *JJ.*, dissenting) that it is lawful for the Court, in addition to the penalties prescribed by the Penal Code, to sentence the prisoner to whipping. *Nassir* v. *Chunder, B. L. R., Sup. Vol., 951,* not followed. MANIRUDDIN *v.* GAUR CHANDRA SHAMADAR

[7 B. L. R., F. B., 165: 15 W. R., Cr., 89

19. ———— *Magistrate of second class under Criminal Procedure Code, 1872—Criminal Procedure Code (Act X of 1882), ss. 2 and 32.*—A person appointed a Magistrate of the second class under Act X of 1872 is incompetent, since the coming into force of Act X of 1882, to pass a sentence of whipping, unless he is specially empowered so to do according to the provisions of s. 32 of the latter Act. EMPRESS *v.* BHAGVANTA RAVJI

[I. L. R., 7 Bom., 303

20. ———— *Whipping in addition to imprisonment—Criminal Procedure Code, 1872, ss. 305, 310.*—In passing a sentence of whipping in addition to six months' imprisonment, a Deputy Magistrate ordered that the prisoner should be brought before him at the termination of the imprisonment, and that the sentence of whipping should then be carried out. On the recommendation of the Sessions Judge (who referred to ss. 305 and 310, Act X of 1872), the High Court cancelled the sentence of whipping as having become inoperative and incapable of being carried out. HUR CHUNDER KULAL *v.* JAFER ALI . . . 20 W. R., Cr., 72

21. ———— Grounds for sentence of whipping—*Statement of grounds in judgment.*—When a sentence of whipping is imposed, the grounds for that punishment should be stated on the judgment. BADIYA *v.* QUEEN . I. L. R., 5 Mad., 158

22. ———— *Previous convictions, Proof of—Kyfeut.*—As a rule, before flogging is given as an additional punishment, there ought to be formal evidence upon the record of the previous

WHIPPING—*concluded.*

convictions relied on. The conviction and identity of the prisoner ought to be proved in the regular way: a mere kyfeut is no evidence whatever. QUEEN *v.* NUZEE NUSHYO . . . 15 W. R., Cr., 52

23. ———— Mode of infliction of sentence of whipping—*Stay of sentence, Grounds for—Act VI of 1864, ss. 11 and 12.*—Meaning of the words "execution shall be stayed" in Act VI of 1864, s. 11. Ss. 11 and 12 together mean that a man sentenced to whipping is not to be whipped unless in a fit state to bear it; the whipping should not be commenced, but if it be commenced, it is not to be continued longer than the man is fit to bear it; and then the sentence has been satisfied, for it cannot be executed by instalments. ANONYMOUS

[3 Mad., Ap., 1

24. ———— Time after sentence within which whipping may be given—*Act VI of 1864, s. 9.*—A sentence of flogging cannot be carried out after the expiry of the limit of fifteen days from the date of sentence provided in s. 9 of Act VI of 1864. ANONYMOUS . 6 Mad., Ap., 38

This ruling was held to be applicable to s. 310 of the Code of Criminal Procedure, 1872. ANONYMOUS . . . . . 7 Mad., Ap., 30

WHIPPING ACT (VI OF 1864).

See CASES UNDER WHIPPING.

WIDOW.

See CO-WIDOWS.

See DOMICILE . I. L. R., 19 Bom., 697

See HINDU WIDOW.

See LIMITATION ACT, 1877, ART. 120.

[I. L. R., 19 All., 169
I. L. R., 21 Calc., 157
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See MAHOMEDAN LAW—INHERITANCE.

[5 W. R., 221
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I. L. R., 19 All., 169
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I. L. R., 21 Mad., 27
I. L. R., 25 Calc., 9
L. R., 24 I. A., 196

See MAHOMEDAN LAW—WILL.

[I. L. R., 25 Calc., 5
L. R., 24 I. A., 196

———— Lien of—

See CASES UNDER MAHOMEDAN LAW—DOWER.

WIFE

See CASES UNDER HINDU LAW—CONTRACT—HUSBAND AND WIFE.

See HINDU LAW—HUSBAND AND WIFE [I. L. R., 13 All., 130

See CASES UNDER HINDU LAW—PARTITION—RIGHT TO PARTITION—WIFE.

See CASES UNDER HINDU LAW—PARTITION—SHARES ON PARTITION—WIFE.

See HUSBAND AND WIFE

See LUNATIC I. L. R., 15 All., 29 [I. L. R., 23 Bom., 653

See CASES UNDER RESTITUTION OF CONJUGAL RIGHTS

See WILL—CONSTRUCTION [4 B. L. R., O. C., 53 I. L. R., 13 Mad., 379 I. L. R., 22 Bom., 774

See WITNESS—CIVIL CASES—PERSONS COMPETENT OR NOT TO BE WITNESSES [I. L. R., 18 Bom., 468

——— Action for harbouring—

See RESTITUTION OF CONJUGAL RIGHTS. [I. L. R., 1 Bom., 164

——— Custody of—

See HABEAS CORPUS . 13 B. L. R., 160

See HINDU LAW—GUARDIAN—RIGHT OF GUARDIANSHIP 23 W. R., 178 [I. L. R., 12 Bom., 110

See MAHOMEDAN LAW—CUSTODY OF WIFE . 5 B. L. R., 557 [13 B. L. R., 160

——— Evidence of—

See EVIDENCE—CRIMINAL CASES—HUSBAND AND WIFE [B. L. R., Sup. Vol., Ap., 11 7 Bom., Cr., 50

——— Maintenance of—

See CASES UNDER HINDU LAW—MAINTENANCE—RIGHT TO MAINTENANCE—WIFE.

See CASES UNDER MAINTENANCE, ORDER OF CRIMINAL COURT AS TO

——— Relinquishment of—

See BIGAMY . I. L. R., 10 Calc., 627

——— Removal of husband's property by—

See THEFT . . 6 Bom., Cr., 9 [8 Bom., Cr., 11 1 Mad., Ap., 23 I. L. R., 17 Mad., 401

WILD ANIMALS

1. ——— Animals feræ naturæ—*Escape of wild animals kept in confinement—Return or pursuit of such animals*—Wild animals are no longer the property of a man than while they continue in his keeping or actual possession; but if they regain their natural liberty, his property ceases until they have a mind to return, which is only to be known by their usual custom of returning or are instantly pursued by their owner, for during such pursuit his property remains. CHITTY CHUKY DOSS *v.* COLLECTOR OF SYLHET 21 W. R., 75

2. ——— *Capture of wild elephant—Right of owner of land where captured—Right of finder*—A wild elephant, having fallen into a pit made by *K N* in his own land, was secured, removed, and tamed by *U M* without the leave of *K N*. *Held* that *K N* was the captor and that *U M* acquired no property in the elephant. MAKATH UNNI MOYI *v.* MALABAR KANDAPUNNI NAIR [I. L. R., 4 Mad., 268

3. ——— ——— *Escaped elephant—Ownership—Recapture*—A tame female elephant escaped from her master's field in company with a herd of wild elephants and resumed her natural wild habits. The owner plaintiff abandoned his search after two months and then offered a reward of R200 to any person who should recapture her. At the end of four months she was recaptured by the defendant, who was compelled to tame her in the same way as if she had been an ordinary wild elephant. Plaintiff offered the reward of R200 to the defendant and demanded the elephant but the demand was refused. *Held* that under the circumstances the plaintiff had lost all claim to the animal. PEAL *v.* CAMPBELL [3 C. L. R., 515

WILL.

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1	EXECUTION	9172
2	ATTESTATION . . .	9176
3	FORM OF WILL . .	9180
4	NUNCUPATIVE WILL .	9182
5	VALIDITY OF WILL .	9182
6	REVOCATION .	9183
7	INSPECTION OF WILL .	9184
8	RENUNCIATION BY EXECUTOR . .	9184
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See COSTS—COSTS OUT OF ESTATE. [I. L. R., 25 Calc., 553

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See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF DEBTS. [I. L. R., 15 Mad., 280

See LIMITATION ACT, 1877, s. 19—ACKNOWLEDGMENT OF OTHER RIGHTS. [I. L. R., 1 Mad., 366

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[I. L. R., 17 Bom., 1
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See MALABAR LAW—WILL.

See MORTGAGE—FORM OF MORTGAGES.
[I. L. R., 1 All., 753

See CASES UNDER PROBATE.

See TRUST . I. L. R., 18 Bom., 551

———— Construction of—

See DEED—CONSTRUCTION.
[I. L. R., 20 Calc., 373

See LIMITATION ACT, 1877, s. 10.
[I. L. R., 8 Calc., 788
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[I. L. R., 15 Calc., 66
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———— Construction of, Suit for—

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L. R., 15 I. A., 127
I. L. R., 21 Calc., 683

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[I. L. R., 20 Calc., 906

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See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 20 Calc., 888

———— Decision as to genuineness of—

See RES JUDICATA—ESTOPPEL BY JUDGMENT . I. L. R., 16 Mad., 380
[I. L. R., 20 Calc., 906
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See ARBITRATION—REFERENCE OR SUBMISSION TO ARBITRATION.
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See SUCCESSION ACT, s. 237.
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———— Power to make—

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WILL—*continued.*

———— Revocation of—

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[I. L. R., 1 Calc., 158

———— Statement in—

See EVIDENCE—CIVIL CASES—RECITALS IN DOCUMENTS I. L. R., 1 Bom., 561

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[I. L. R., 20 Bom., 562

———— Suit by person claiming under—

See CIVIL PROCEDURE CODE, 1882, s. 50.
[I. L. R., 6 Bom., 73

1. EXECUTION.

1. ———— Succession Act, s. 50—*Signature of testator—Nature of execution required.*—To entitle the executor to probate, the signature of the testator must be that of a conscious person, and not the results of mere mechanical movement of the hand. KALEE TARA DOSSIA *v.* NOBIN CHUNDER KUR . . . . . . 21 W. R., 84

2. ———— *Execution of will by impression of facsimile of the name—Succession Act, s. 50.*—A testator, who for a number of years was, as he was unable to write, in the habit of using a name stamp, which used to be attached by a servant to any document or paper he wanted to sign, executed a will, and under his direction a servant affixed the impression of his name stamp on the said document. *Held* that the execution of the will in this case was proper and came strictly within the meaning of the words used in s. 50 of the Indian Succession Act. NIRMAL CHUNDER BANDOPADHYA *v.* SARATMONI DEBYA . . . . I. L. R., 25 Calc., 911
[2 C. W. N., 642

3. ———— *Want of proof of due execution and of knowledge by testatrix of contents of will.*—Where the defendant claimed the property in dispute under the will of a Hindu widow, but kept back the evidence which would have clearly established that the mark purporting to be made by the widow was really made by her or at her desire, and that at the time of the execution the nature and contents of the documents were well known to her, the Court refused to act upon it. HARILAL HARJIVANDAS *v.* PRANVALAVDAS PARBHUDAS
[I. L. R., 16 Bom., 228

4. ———— *Probate and Administration Act (V of 1881), s. 50—Evidence as to the execution of a will by a person near death.*—On a question of fact raised in 1887, whether an alleged testator had or had not been able to duly execute his will, as he was said to have done during his last illness, the judgment of the District Court in the affirmative was restored. The judgment of the High Court which would have revoked the probate granted in 1882 was reversed, upon the consideration of conflicting evidence as to the mental capacity of

WILL—*continued.*

I. EXECUTION—*continued.*

the testator and as to the genuineness of his signature ROMESH CHUNDER MUKERJI *v.* RAJANI KANT MUKERJI . I. L. R., 21 Calc., 1

5. ——— *Evidence as to execution—Duty of Judge.*—The question whether an alleged Hindu will was genuine or not was raised by the relations of the deceased on an application, under the Probate and Administration Act (V of 1881) *for administration with the will annexed filed by the* proponent. It was held upon evidence, which was

[illegible]

Judge in such cases patiently to investigate the

[illegible]

usages and habits of thought. DOWLAT KOER *v.* PAMPHUL DAS . I. L. R., 25 Calc., 460
[L. R., 25 I. A., 21
2 C. W. N., 177

6. ——— *Proof of due execution of will where the mental capacity of testator is in dispute—Rules for decision of such cases—Presumption—Duty of Appellate Court in deciding on evidence of witnesses.*—In all cases in which

[illegible]

capacity of a person whose conduct they have observed and whose state of mind they depose to: for the original Court has not merely the better opportunity of judging of the truthfulness of the evidence from the manner in which it is given, but also of judging how far the witnesses possess those qualities on which depends much of the value of evidence given in good faith, *viz.*, power of observa-

[illegible]

testator was such that it was doubtful whether the

[illegible]

document as his will, but also that he knew and approved of the contents of the instrument; and in such cases of disputed execution the Judge should consider and express an opinion upon both these questions. In ordinary cases execution of a will by a competent testator raises the presumption sufficient, if nothing appears to the contrary, to establish) that he knew and approved of the contents of the will.

WILL—*continued.*

I. EXECUTION—*continued.*

[illegible]

by evidence which shows that it is, to say the least, very doubtful whether his state of mind was such that he could have "duly executed" the will as he is alleged to have done, the Court ought to find whether upon the evidence the testator was of sound disposing mind and did know and approve of the contents of the will. Where this had not been done the Appellate Court, after considering the whole evidence, held, *contrary to the decision of the lower Court*, that the will was not proved and refused probate. WOOMESH CHUNDER BISWAS *v.* RASHMONINI DASSI
[I. L. R., 21 Calc., 279

[illegible]

not resemble one where a testator near death might, with the requisite degree of knowledge, have executed a disposition of his property for which previously and while his mind was still in vigor, he might have given instructions. RASH MONINI DASI *v.* UMESH CHUNDER BISWAS . I. L. R., 25 Calc., 824
[L. R., 25 I. A., 109
2 C. W. N., 321

7. ——— *Proof of execution of will—Probabilities—Evidence.*—The fact of the execution of a will was disputed by a testator's relations. They impugned the will mainly on the theory of the improbability of it having been executed by him under the circumstances existing at the time, and in the presence of the witnesses alleged to have attested it. They admitted his intention to execute such a will, but contended that having long deferred the execution he had died without having effected it. To outweigh the strong and satisfactory evidence upon which the affirmative of due execution rested, it would have been necessary that the improbabilities should have been correct and clearly made out. But in their Lordships' opinion, it was neither the one nor the other and was based on an exaggerated view. The suggested inferences against the will were not borne out; and on the other hand the testimony in support of it was good. The judgment of the High Court, maintaining the will, was affirmed. CHOTEY NARAIN SINGH *v.* RATAN KOER . I. L. R., 22 Calc., 519
[L. R., 22 I. A., 12

8. ——— *Suit by testator's son contesting validity of will—Alleged testamentary incapacity.*—Although the mental faculties of a person suffering from partial paralysis may have been affected by his physical weakness, he may still be capable of devising and of executing a will of a simple character, although unfit to originate or to comprehend all the details of a complicated settlement. In one sense the testator may not have been in the state which the witnesses described as "the

WILL—*continued.*

1. EXECUTION—*continued.*

full senses." He was feeble in body. The vigour of his mind was impaired, and his utterance was defective. On the other hand, there was nothing in the evidence which could reasonably lead to the inference that he was incapable of understanding such business as fell to his lot, or of regulating the succession to his property. At the hearing of the suit, it was alleged that he was subject to insane delusions, as to which, however, the Courts below concurred in finding that they had not been shown to have existed. The statements made by him alleged to have been the result of delusion, had not been shown to be altogether without foundation. As to this, their Lordships' opinion was that, in order to constitute an insane delusion affecting the question of testamentary capacity, it should have been shown, not only that it was unfounded, but also that it was so destitute of foundation that no one, save an insane person, would have entertained it. The judgment that this testator had not testamentary capacity appeared to them to have had the unsafe basis of speculative theory derived from medical books and judicial *dicta* in other cases, and not to have been founded on the facts proved in this. SAJID ALI v. IBAD ALI

[I. L. R., 23 Calc., 1
L. R., 22 I. A., 171

9. ———— *Incapacity from illness—Influence not amounting to coercive influence.*—A Khoja Mahomedan resident in Bombay made his will in 1886, appointing his wife, and his eldest son by a former wife, to execute it. The testator died on the 9th February 1891, having, at different times, in the interval, made four codicils. The widow, applying for probate of all the above, propounded a fifth codicil, alleging it to have been made by her husband on the 6th February 1891. The son petitioned for probate to be delivered to him and to the widow, but only of the will and of the first two codicils, contesting the three later codicils as having been made under undue influence exercised by the wife. He disputed the last codicil, not only on the ground of undue influence, if the codicil had been in fact executed, but because at the time of the alleged execution his father was almost unconscious, and unable to understand what he was doing. The High Court, in its original testamentary jurisdiction, refused probate of the three disputed codicils, granting probate of the will and of the first two codicils only. The Appellate High Court granted probate of the will and of the five codicils, finding that no undue influence had been exercised, and that the fifth had been executed by the testator with knowledge and comprehension of its contents and of his free volition. The Judicial Committee affirmed the judgment of the Appellate Court as to the absence of undue influence. In their opinion, if there was not evidence, and there was not, to show coercion in the special matter of the codicils, general assertions of the wife's commanding character, and of the husband's weakness, and of their differences went for little. But in regard to the fifth codicil, they affirmed the judgment of the original Court, finding the evidence to have left open the inference that the testator had been at the time when it was alleged by the widow that he had made this codicil too exhausted and ill for such a testamentary act. SALA MAHOMED JAFFERBHAI v. DAME JANBAI

[I. L. R., 22 Bom., 17
L. R., 24 I. A., 148
1 C. W. N., 481

WILL—*continued.*

1. EXECUTION—*concluded.*

2. ATTESTATION.

10. ———— Directions as to attestation —*Succession Act, s. 50—Probate.*—An unprivileged will will not be recognized by the Court and admitted to probate unless executed in accordance with the directions contained in Part VIII, Act X of 1865, such directions being imperative and not merely declaratory. *Held* that the words "in the presence of the testator," in cl. 3 of s. 50 of the Succession Act, may receive the same construction that has been put upon them in the English Courts, but cannot receive larger interpretation. ESAIAS v. GABRIEL

[3 N. W., 32

11. ———— Presence of witnesses —*Succession Act (X of 1865), s. 50.*—Where the testator does not himself sign the will, but some other person signs it in his presence and by his direction, then besides this other person, there must be two witnesses who must sign the will in the presence of the testator. *In the goods of Roymoney Dossee, I. L. R., 1 Calc., 150,* and *Hurro Sundari Dabia* v. *Chunder Kant Bhuttacharjee, I. L. R., 6 Calc., 17,* cited. IN THE MATTER OF THE PETITION OF HEMLOTA DABEE

[I. L. R., 9 Calc., 226

S. C. GRISH CHUNDER BANERJEE v. HEMLOTA DEBI . . . . . 11 C. L. R., 359

12. ———— Attesting witness—*Succession Act, s. 50—Signature made for testator by party afterwards attesting.*—The person making the signature of a will for the testator is not competent as an attesting witness of its execution under the provisions of the Succession Act. *In the goods of Bailey, 1 Curt., 914,* and *Smith* v. *Harris, 1 Rob., 262,* distinguished. IN THE GOODS OF NANABHAI SORABJI MESTRI. AVABAI v. PESTANJI NANABHAI

[11 Bom., 87

13. ———— Mode of attestation—*Execution of will—Wills Act, XXV of 1838, s. 7.*—S. 7 of the Wills Act, XXV of 1838, enacts "that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned: (that is to say) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." A testator signed his will in the presence of a witness who subscribed it in his presence, and some time afterwards, upon the arrival of another witness, the testator, in the

WILL—*continued*

2. ATTESTATION—*continued.*

joint presence of the former witness and the other subscribing witness, acknowledged his subscription at the foot of the will The second witness then subscribed the will, and the first witness in his and the testator's presence acknowledged his subscription, but did not re subscribe *Held* by the Judicial Committee (affirming the decision of the Supreme Court at Calcutta) that the requirements of the Act had not been sufficiently complied with; it being necessary that both witnesses should be jointly present at the same act of the testator and jointly subscribe it in his presence. CASEMENT *v.* FULTON

[3 Moore's I. A., 395

14. ———— **Acknowledgment of signature by testator.**—It is a sufficient acknowledgment by a testator of his signature to his will if he makes the attesting witnesses understand that the paper which they attest is his will, though they do not see him sign it, or observe any signature to the paper which they attest, provided that the Court is satisfied that the testator's signature was on the will when the witnesses attested it MANICKBAI *v.* HORMASJI BOMANJI . . I. L. R., 1 Bom., 547

15 **Sufficiency of attestation**—*Succession Act (X of 1865), s. 50—Probate—Hindu Wills Act (XXI of 1870), s 2*—By the Succession Act, s 50, no particular form of attestation is necessary: therefore, where, to a document purporting to be her last will and testament the name of the testatrix was written by *A*, and the testatrix then in his presence affixed her mark and *A* in her presence wrote beneath it "by the pen of *A*" and the testatrix was then identified to the Registrar, who was present, by *B*, who had seen her affix her mark to the document, and who in her presence put his signature as having identified her *Held* a sufficient attestation; and probate was granted IN THE GOODS OF ROYMONEY DOSSEE I. L. R., 1 Calc., 150

16. ———— *Succession Act (X of 1865) s 50, cl 3—Initials of witness.—Semble*—If the attesting witnesses affix their initials at the time of witnessing the execution of a will it is a sufficient compliance with the terms of s 50 of the Succession Act. AMMAYEE *v.* YALUMALAI

. [I. L. R., 15 Mad., 261

17. ———————— *Will not attested by two witnesses—Succession Act (X of 1865), s. 50—Hindu Wills Act (XXI of 1870), s 2, cls (a) and (b)*—The Hindu Wills Act (XXI of 1870) applies s 50 of the Indian Succession Act (X of 1865) to those wills only that are mentioned in s. 2 cls. (a) and (b), of the former Act. A will which was not such a will as there mentioned was held to be valid though not attested by two witnesses. IN RE BAPUJI *v.* JAGANNATH

[I. L. R., 20 Bom., 674

18.———————— — *Pardanashin lady —"In the presence of"—Succession Act (X of 1865), s 50*—After execution of her will by a testatrix, a pardanashin lady, and its attestation in her presence by a witness who had seen her execute it, it was presented for registration, the testatrix sitting behind one fold of a door which was closed, the other fold being open, and the Registrar and another person who identified the testatrix being in the verandah outside the room behind the door of which the testatrix sat all that the Registrar actually saw of her being her hand The testatrix admitted her execution of the will, and her admission was endorsed on the will and witnessed by the Registrar, and the person who identified her, at the same time *Held* that the witness was "in the presence of" the testatrix within the meaning of s 50 of the Succession Act (X of 1865). HORENDRANARAIN ACHARJI CHOWDHRY *v.* CHANDRAKANTA LAHIRI

[I. L. R., 16 Calc., 19

19. — *Succession Act (X of 1865), s 50—Proof of due attestation of will —Strict proof of due attestation whether necessary* —*S* the widow of *J*, the testator, applied for probate of his will The writer of the will deposed that he had signed the will before the testator signed, and that the testator signed immediately after him, and that none of the witnesses signed in his presence *D* one of the witnesses said that he signed the will after the testator had personally acknowledged his signature to it, and that when he signed other witnesses' names were on the will Of the other witnesses three were proved to have been dead and the remaining witness was not examined, but his signature as well as the signatures of the witnesses who were dead were proved. There was no direct evidence that the testator had acknowledged his signature to these witnesses or that the will was otherwise properly attested by a second witness. *Held* that strict affirmative proof of due attestation is not absolutely necessary in cases of this class; and if the circumstances are such as to warrant the Court in reasonably concluding from those circumstances that the will has been duly attested probate may be granted That upon the whole evidence it could reasonably be concluded that the will had been duly attested in accordance with law *Wright v. Sanderson L. R., 9 P. D., 149,* referred. SIDO SUNDARI DEBI *v.* HEMANGINI DEBI

[4 C. W. N., 204

20. ———————————— *Grant of probate – Signature—1 Vict, c 26 (Wills Act) s 9— Succession Act (X of 1865), s 50* To the will of *A* a British-born subject and a member of the Bengal Civil Service who died in India possessed of personal property only, a native servant of the testator, purporting to attest the will, appended words in the Persian character signifying "this is *A*'s signature" *Held*, on an application for probate that this was not a sufficient subscription of the will. *Semble* —A signature by mark would be a sufficient signature to a will by a witness under the Succession Act. IN THE GOODS OF WYNNE 13 B. L. R., 302

21. —— *Succession Act (X of 1865) s 50 Hindu Wills Act (XXI of 1870), s 2*—S 50 of the Succession Act (X of 1865) clearly intends that the two attesting witnesses to a will shall sign their names after the testator or testatrix shall have executed the will. *Dinonath Dinda*

WILL—*continued.*

2. ATTESTATION—*continued.*

v. *Doyaram Jana, I. L. R., 5 Calc., 738,* and *Fernandez* v. *Alves, I. L. R., 3 Bom., 382,* followed. If a testatrix admits a signature on a will to be hers before a Registrar of Assurances, and is identified before him by one of the witnesses to the signature, and both the Registrar and the identifier sign the names as witnesses to the admission made,—*Held* that such an attestation would be sufficient to satisfy s. 50 of Act X of 1865. *In the goods of Roymoney Dossee, I. L. R., 1 Calc., 150,* followed. IN THE MATTER OF THE PETITION OF HURRO SUNDARI DABIA. HURRO SUNDARI DABIA *v.* CHUNDER KANT BHUTTACHARJEE

[I. L. R., 6 Calc., 17 : 6 C. L. R., 303

22. ———— *Attesting witness, when he should sign—Succession Act (X of 1865), s. 50.*—The signatures of two or more attesting witnesses to a will required by s. 50 of the Succession Act (X of 1865) must be attached to the will after, and not before, the testator's signing or affixing his mark to it. *Quære*—Whether a will can be properly attested by a marksman. BISSONATH DINDA *v.* DOYARAM JANA

[I. L. R., 5 Calc., 728 : 5 C. L. R., 565

23. ———— *Succession Act (X of 1865), s. 50—Witness—Signature—Mark.*—The direction contained in s. 50, cl. 3, of the Succession Act (X of 1865) as to the signature of witnesses attesting an unprivileged will is not satisfied by the witnesses affixing their marks. It is necessary for the validity of a will that the actual signature, as distinguished from a mere mark, of at least two witnesses should appear on the face of the will. FERNANDEZ *v.* ALVES

[I. L. R., 3 Bom., 382

24. ———— *Will attested by marksmen—Witness—Signature—Mark—Succession Act (X of 1865), s. 50.*—The direction contained in s. 50, cl. 3, of the Succession Act, as to each of the witnesses signing the will, is not satisfied by the witnesses affixing their marks, and it is necessary for the validity of a will that the si gnatureas, distinguished from a mere mark, of at least two witnesses should appear on the will. *Fernandez* v. *Alves, I. L. R., 3 Bom., 382,* followed. *In the goods of Wynne, 15 B. L. R., 392,* dissented from. If a testator, on presenting his will for registration, admits a signature on the will to be his before a Registrar, and is identified before him by a witness, and both the Registrar and the identifier sign their names on the will as witnesses to the admission of the testator, such attestation is sufficient to satisfy the requirement of cl. 3 of s. 50, Act X of 1865. *In the matter of Hurro Sundari Dabia, I. L. R., 6 Calc., 17,* followed. NITYE GOPAL SIRCAR *v.* NAGENDRA NATH MITTER . . I. L. R., 11 Calc., 429

25. ———— *Acknowledgment of signature by testator—Attestation—Witness—Succession Act (X of 1865), s. 50.*—The signature of a testator at the commencement of his will, when the witnesses attested it, and his admission to the attesting witnesses that the paper which they attest is his last will, constitute sufficient acknowledgment of his signature to his will, even though the witnesses do not see him sign it, or observe any signature to the paper which they attest. The registration of his will by a testator and his signature to the certificate of admission of execution, testified by the signatures of the Sub-Registrar and of a witness, is sufficient attestation to satisfy the requirements of s. 50 of Act X of 1865. *Manickbai* v. *Hormasji Bomanji, I. L. R., 1 Bom., 547; Hurro Sundari Dabia* v. *Chunder Kant Bhuttacharjee, I. L. R., 6 Calc., 17;* and *Nitye Gopal Sircar* v. *Nagendra Nath Mitter Mozumdar, I. L. R., 11 Calc., 429,* referred to and followed. AMARENDRA NATH CHATTERJEE *v.* KASHI NATH CHATTERJEE . I. L. R., 27 Calc., 169

26. ———— *Unattested alterations in a Hindu will—Letters of administration—Succession Act (X of 1865), s. 58.*—In a will properly attested, some subsequent alterations were made by the testator in the presence of the Registrar, but these alterations were unattested. *Held* that, under s. 58 of the Indian Succession Act, made applicable to the Hindus by the Hindu Wills Act, the alterations should have been attested, as the will itself, by two persons signing in the presence of the testator, and so letters of administration should issue, not with the copy of the will, but with the copy of the will without the alterations. RAGHUBAR DYAL *v.* RAM RAKHAN LALL . 1 C. W. N., 428

27. ———— **Repudiation of signature by attesting witness.**—The mere fact of an attesting witness to a will repudiating his signature does not invalidate a will, if it can be proved by the evidence of other witnesses of a reliable character that he has given false evidence. If he does repudiate it uncontradicted, the mere fact of there being two witnesses purporting to have witnessed the testator's signature is not a compliance with s. 50 of the Succession Act. NUBO KISHORE DOSS *v.* JOY DOORGA DOSSEE . . . 22 W. R., 189

28. ———— **Forged attestations, Effect of**—*Effect on title given under genuine portion of will.*—*C*, under a power given to her by the will of *L*, her husband, a Hindu, sold certain land to *R*. After the sale, certain forged attestations were added to the will. In a suit brought by the heir of *L* to recover the property sold by *C* to *R*, *R* relied on the will which was produced by other defendants in the suit. *Held* that *R*'s title could not be affected by the forgery. PARAMMA *v.* RAMACHANDRA

[I. L. R., 7 Mad., 302

3. FORM OF WILL.

29. ———— **Buddhist will**—*Probate—Succession Act (X of 1865), s. 331.*—Probate may be granted of the will of a Buddhist made after the 1st January 1866. It is not necessary that the will of a Buddhist should be executed according to the formalities prescribed by the Succession Act. IN THE MATTER OF KOKYA DINE

[2 B. L. R., A. C., 79 : 10 W. R., 417

WILL—*continued.*

3. FORM OF WILL—*continued.*

30. ———— Testamentary document—*Will to have effect on contingency—Probate.*—*A*, being ill and away from home, wrote to his brother *B* certain directions as to the management of his property, and concluded "Brother, if I die of this sickness and *C* survive me, then whatever property I have you will give one half to *C*," etc. In another and subsequent letter he wrote to *B*: "I don't think that the illness I am now suffering from will ... you ... etc. ... -tters ... ever, but died suddenly a year later, without having made any other testamentary disposition of his property. In a suit brought by *B* as executor of *A*, according to the tenor of these documents against the widow of *A*, for the purpose of having probate of them ... *Held* ... and therefore probate which had been granted by the Court at the original hearing was ordered to be brought in and cancelled. KAMEENEE DOSSEE *v.* BISSONATH GHOSE 2 Ind. Jur., N. S., 6

31. ———— *Imperfect form of will—Will unexecuted by testator—Blank spaces in body of will—Application for probate.*—A testator died leaving, as his will a printed form of will ... ever, written his name ... completed the disposition clause bequeathing all his property to his wife and appointing her sole executrix. *Held* that this was sufficient, and the will should be admitted to probate. *In the goods of Pasmore, L. R., 1 P. & D., 653*, referred to. IN THE GOODS OF PORTHOUSE

I. L. R., 24 Calc., 784

32. ———— *Document intended to take effect partly in the lifetime of the executant and partly after the executant's death—Probate and Administration Act (V of 1881), s. 3.*—There is no objection to one part of an instrument operating in *praesenti* as a deed and another *in futuro* as a will. *Cross v. Cross, 8 Q. B., 714; 13 L. J. N. S., Q. B., 217*, referred to. CHAND MAL *v.* LACHHMI NARAIN

I. L. R., 23 All., 163

33. ———— Codicil—*Probate, Application for—Document referring to will.*—After letters of administration with the will annexed had been granted, the administrator found a book containing memoranda in the testator's handwriting, made after the date of the will and directing certain dispositions of his property. One entry referred in express terms to the will. The testator was a domiciled Scotchman. *Held*, on a petition by the administrator, asking that the memoranda might be admitted to probate, that the memoranda were not testamentary documents, and the petition was therefore dismissed. IN THE GOODS OF WEMYSS . . I. L. R., 4 Calc., 721

4. NUNCUPATIVE WILL.

34. ———— Validity of nuncupative will—*Roman Catholics of Portuguese extraction—Intestate succession—Quære.*—Whether a Roman C... succession of intestates amongst members of that church? REBEIRO *v.* REBEIRO 3 W. R., 63

35. ———— *Nuncupative will of a Mahomedan—Probate and Administration Act (V of 1881), ss. 2, 24, 25, 26, 62—Succession Act (X of 1865), s. 211 and Ch. IV.*—Probate may be granted of a nuncupative will. IN THE MATTER OF THE WILL OF MAHOMED ATBA. IN RE MARIAMBAI I. L. R., 24 Bom., 8

5. VALIDITY OF WILL.

36. ———— Military testamentary document—*Application for probate—Lapse of time—Invalidity of will.*—A military testament valid in its inception may be deprived of its privilege by lapse of time. IN RE GODBY 1 Hyde, 103

37. ———— Will of Cutchi Memon—*Will disposing of ancestral property.*—Wills made by members of the Cutchi Memon community, whereby the testators disposed of property which was proved to be ancestral, held to be invalid. MAHOMED SIDICK *v.* AHMED ABDULA HAJI ABDSATAR *v.* AHMED I. L. R., 10 Bom., 1

38. ———— Will of East Indian testa... ... High Court ...

39. ———— Question of due execution and validity of will—*Disposition of immoveable property in British India.*—The validity of a will which purports to dispose of immoveable property in British India must be tested by the rules applicable to the execution of wills in British India. BHAURAO DADAJIRAO *v.* LAKSHMIBAI

I. L. R., 20 Bom., 607

40. ———— Will procured by importunity of wife—*Succession Act, s. 48—Undue influence.*—The wife of the testator persuaded him to execute a will in supersession of a former will less favourable to her, but the influence which she exerted

WILL—*continued.*

5. VALIDITY OF WILL—*concluded.*

was not such as to deprive the testator of the exercise of his judgment and volition. *Held* that the conduct of the wife did not amount to undue influence. MORISON *v.* ADMINISTRATOR-GENERAL OF MADRAS [I. L. R., 7 Mad., 515

41. ———— **Proof of genuineness of will** —*Registration and attestation.*—When a document propounded as a will is proved to have been executed and registered by the alleged testator, it is still essential to enquire into the circumstances connected with its execution and registration, when the will is inofficious and there are other suspicious matters connected with it. KISTO CHURN MOJOOMDAR *v.* DWARKA NATH BISWAS . . 10 W. R., 32

42. ———— **Blank spaces left in body of will**—*Alterations and erasures in will—Presumption—Pencil writing subsequent to the execution of the will—Intention of testator.*—The circumstance that blank spaces are left in the body of a will is no objection to its being a valid will. If a will contains alterations and erasures, the presumption will be that they were made after the will was executed; and if there is no evidence rebutting that presumption, they will form no part of the will. The lower Court having declined to grant probate of a will (which it held to be proved), on the ground that it was an incomplete will, being of opinion that the blanks, alterations, and cancellations in the will showed that the deceased intended it to be a draft, and not the final expression of his wishes,—*Held* that, the will being one which did not require to be signed by the testator, probate should be granted to include a pencil addition proved to have been made by an attesting witness at the desire of the testator, but excluding all other additions, erasures, or cancellations. PANDURANG HARI VAIDYA *v.* VISHNU VINAYAK KANE . I. L. R., 16 Bom., 652

43. ———— **Will in excess of power of Hindu widow.**—A Hindu widow made a will disposing of property, of which under an award she had only the use during her life, and to which the plaintiff, her son, was entitled after her death. While she was still living, the plaintiff filed this suit, praying that the will might be declared invalid. The defendants were the testatrix and those who took under the will. While the suit was pending, the testatrix died. *Held* that the will should be declared to be invalid so far as it operated to defeat the award. MAGANLAL PURUSHOTTAM *v.* GOVINDLAL NAGINDAS . . I. L. R., 15 Bom., 697

6. REVOCATION.

44. ———— **Evidence as to revocation of a will**—*Onus of proof of revocation of will.*—A will duly executed is not to be treated as revoked, either wholly or in part, by a will which is not forthcoming, unless it is proved by clear and satisfactory evidence that the will contained either words of revocation or dispositions so inconsistent with those of the earlier will that the two cannot stand together. It is not enough to show that the will which is not forthcoming differed from the earlier one, if

WILL—*continued.*

6. REVOCATION—*concluded.*

it cannot be shown in what the difference consisted. It is also settled that the burden of proof lies upon him who challenges the existing will. These propositions are of general application. MIRZA *v.* UMDA KHANAM. MIRZA *v.* GUNNA KHANAM [I. L. R., 19 Calc., 444 L. R., 19 I. A., 83

45. ———— **Revocation of portion of will**—*New page of will not duly executed substituted by testator after execution of will—Dependent relative revocation—Probate.*—After the death of the testator (H. G. Meakin), his will was found among his private papers in a sealed envelope with the words "H. G. Meakin's will, not to be opened until after death," written in his handwriting on the face of the envelope. The will was wholly in his writing, and was written on four separate sheets of paper pinned together. The first, third, and fourth pages were of blue paper and of the same size, and each of them was signed at the bottom by the testator and by two witnesses. The fourth page stated the date of the will and was signed by the testator and was duly attested by the said two witnesses. The actual execution of the will took place (as was proved by evidence) in March or April 1894. The second page, however, was of a different kind of paper from the other pages and of smaller size, and was signed by the testator, but not by witnesses. This second page contained a bequest to a child who was born in May 1894, *i.e.*, some months after the will was executed. The executors propounded the will. *Held* that probate must be refused. KER *v.* MEAKIN [I. L. R., 20 Bom., 370

7. INSPECTION OF WILL.

46. ———— **Practice**—*Application by next-of-kin of deceased.*—The Court, on the application of one who is next-of-kin of a deceased Hindu, ordered a person in possession of an alleged will of the deceased to bring in and deposit the same with the officer of the Court for the purpose of being inspected, and a copy thereof taken by such applicant. IN THE GOODS OF BALKRISHNA GANPATJI [1 Bom., 114

8. RENUNCIATION BY EXECUTOR.

47. ———— **Procedure after renunciation**—*Proof of execution of will in Court—Administration accounts.*—A Hindu testator empowered his executor to lay out such portion of his estate as the executor might think fit towards charitable purposes, and did not dispose of the residue of the estate. The executor renounced, and no probate of the will or letters of administration, with the will annexed, was granted. In a suit by the testator's sole heiress for construction of the will and for administration, the Court allowed the execution of the will to be proved in Court, declared that it was void for uncertainty, and directed the usual administration accounts to be taken. SURBOMUNGOLA DABEE *v.* MOHENDRONATH NATH . I. L. R., 4 Calc., 508

WILL—*continued*

9 CONSTRUCTION.

48 ——— **Construction of will**—*Powers to construe will without administration suit—Chancery practice*—A testator by his will devised certain house property first for the celebration of pujahs and the worship of an idol and then that his children with their families should be allowed to live there One of the sons used the premises for the purpose of his business as a kaviraj which was objected to by the other sons as being contrary to the terms of the will One of the defendants also contended that, before the Court could construe the terms of the will to ascertain the meaning of the testator, it was necessary to bring a proper administration suit *Held* that considering the character of the consequential relief sought, the Court could construe the will without an administration suit. That questions between trustees and beneficiaries and between trustees and strangers requiring the construction of provisions in a trust deed have been determined without the Court being asked to undertake the entire administration of the trust *In re Weall, I L R*, 42 *Ch D* 674 approved. Buroodbutty Prosonno Sen *v* Gooroo Prosonno Sen I. L. R., 25 Calc., 112

49 ——— **Rules of construction**—*Intention of testator—Meaning of "purchase"*—The rule of construction applicable to a will is that words in general are to be taken in their ordinary and grammatical sense unless a clear intention to use them in another can be collected. If the language of a will is perfectly unambiguous and precise, it cannot be strained for the purpose of giving effect to what possibly might have been the intention of the testator but is not expressed or implied in the terms of the testament. *G*, by a clause in his will gave his wife a life interest in the house in his possession, and in those which he might afterwards "purchase" In *G*'s lifetime his younger brother died, and *G* thereby acquired a house by inheritance. *Held*, there being nothing to show that *G* had used the word "purchase" in any other than its ordinary sense that the language of the will could not be strained in order to give effect to what possibly might have been the testator's desire had he foreseen the death of his younger brother in his own lifetime, but was not expressed or implied in the terms of the testament and that the house did not pass under the will to the testator's widow Gronoe *v* Gronoe [6 N. W., 210

50 **Appointment of executors by implication**—Plaintiffs sued in 1894 to recover property belonging to the estate of a testator, claiming to be his executors under a will The property was alleged to have been entrusted by the testator in 1893 to the defendant The will contained no express appointment of executors, but it provided that the plaintiffs should take care of the estate during the minority of a son who was to be adopted to the testator and imposed upon them the duty of providing for the maintenance of persons therein named *Held* that the plaintiffs were not appointed executors by implication. Srinamma *v* Chennappa . I. L. R., 20 Mad., 467

WILL—*continued*

9 CONSTRUCTION—*continued*

51. ——— **Effect of words excluding from inheritance**—*Parsi law*—*A*, a Parsi inhabitant of Surat died there on the 13th February 1879 leaving him surviving the following relations, *viz*: A daughter *J* (the respondent) by his first wife [illegible]

married to *A* and whose son *F* was the appellant. By his will *A* expressly directed that neither his daughter *J* nor his widow Dhanbai should take any share of his property the whole of which he bequeathed to his brother *P* who, however, pre- [illegible]

[I. L. R., 4 Bom., 637

52. **Commission of manager of estate how calculated**—*Intention of testator*—Other questions disposed of in the Court of first instance having remained undecided by the High Court which dealt with the question of jurisdiction alone were considered with reference to whether there had or had not been shown any good reason for reversing or varying the order of the original Court. Among these the question whether the manager's commission was to be calculated on the gross rental of the estate or on the income divisible among the sharers was held to be settled by the indication of the latter mode of calculation in the will. Oude *v* Skinner I. L. R., 3 All., 91: 7 C L. R., 205 [L. R., 7 I. A., 107

53 ——— **Armenian will**—*Devise—Absolute estate—Estate for life*—An Armenian by his will in the Bengali language made a gift to his son in the following terms I bequeath to [illegible] my talukhs (which he named) and 10,000 in cash He shall enjoy the profits of the aforesaid talukhs. On his demise his sons shall get The mukhtears shall make over to the satisfaction of [illegible] *Held* that the will was to be construed according to equity and good conscience, and not according to English law The rule applicable was that unless a contrary intention appeared the estate given was an absolute one *A* took an absolute estate under the devise Bhoprorrox *v* Pogose [12 B. L. R., 74: 10 W. R., 181

54. ——— **Superstitious uses, English law against**—*Application of English law*—The English rule of law which prohibits the bequest of money for superstitious uses has no application in India. Judah *v* Judah [5 B. L. R., 433

55 ——— **Bequest for performance of masses**—*Validity of bequest*—A bequest by a will of a sum of money for the performance of masses in Calcutta is valid. Andrews *v* Joakim [2 B. L. R., O C., 143

WILL—*continued.*

9. CONSTRUCTION—*continued.*

56. ———— *Validity of bequest—Gift to superstitious uses.*—A bequest by a Roman Catholic of Portuguese descent, born and domiciled in Calcutta, for the performance of masses, is not a gift to superstitious use. DAS MERCES *v.* CONES . . . . . . 2 Hyde, 65

57. ———— Bequest for masses held void as infringing the rule against perpetuities. COLGAN *v.* ADMINISTRATOR-GENERAL OF MADRAS . . . I. L. R., 15 Mad., 424

58. ———— Legacy to attesting witness —*Succession Act, s. 54.*—A legacy to the attesting witness of a will is void under s. 54 of the Succession Act, whether or not the attestation of the witness is indispensable to the validity of the will. ADMINISTRATOR-GENERAL *v.* LAZAR

[I. L. R., 4 Mad., 244

59. ———— Legacy to minor—*Absolute gift—Discretion of executor.*—Where there is an absolute bequest and power to executor to delay making over the legacy at discretion,—*Held* that, on attaining majority, the legatee should at once be put in possession. DE SILVA *v.* DE SILVA

[1 Ind. Jur., N. S., 16: Bourke, O. C., 281

60. ———— Legacy whether to be paid out of particular fund or out of general assets — *Demonstrative legacy.* — Payment of legacies, or gifts of stipends, having been refused by the representatives of the testatrix, on the ground that she had no power to dispose of the fund out of which the will must be construed to direct their payment,—*Held*, on a consideration of the whole will, that the words of the gift were wide enough to charge them upon the whole of her moveable estate; also that, if the words of the will were to be taken in a more restricted sense, the gift of the stipends must be regarded as a demonstrative legacy, and in that view they would be payable out of the general estate, on failure of the particular fund pointed out. MIRZA *v.* UMDA KHANAM. MIRZA *v.* GUNNA KHANAM . I. L. R., 19 Calc., 444

[L. R., 19 I. A., 83

61. ———— Devise of one kani out of an estate—*Right of selection by the devisee.*—The owner of land, measuring one kani and three-quarters, died, leaving a will by which he devised one kani thereof to the plaintiff who now sued to recover one kani selected by him out of the land in question. *Held* that plaintiff had the right to make his selection and was entitled to a decree. NARAYANASAMI GRAMANI *v.* PERIATHAMBI GRAMANI

[I. L. R., 18 Mad., 460

62. ———— Domestic servant—*Legacy, Suit for—Sirang.*—The testator, a Hindu, made a will in the English form and language, in which he bequeathed (*inter alia*) as follows: "To each of my domestic servants in Calcutta who shall have been in my service ten years and upwards at the time of my death R100 for every rupee of monthly salary drawn by them from me respectively." The plaintiff had been in the service of the testator for about forty years as sirang on board a steamer which the testator kept on the river, and in which he used to visit his zamindaris and perform other journeys by water. The plaintiff was in the habit of daily attending at the testator's residence, and there obeying any orders that might be given him. If the steamer was not needed, the plaintiff used to attend at the testator's residence from early in the morning to about one in the afternoon, returning to take his meals and stop on board the steamer. *Held* that he was entitled to take under the legacy as a domestic servant of the testator. DHANNO SIRANG *v.* UPENDRA MOHAN TAGORE . . . . . 8 B. L. R., 244

63. ———— *Washerman.*—*Held* on the evidence that the plaintiff had failed to prove he was a domestic servant of the testator, so as to entitle him to take a legacy under this clause. BHIM DAS *v.* UPENDRA MOHAN TAGORE

[9 B. L. R., Ap., 4

64. ———— Husband and wife—*Trustee—Sole use and benefit.*—A testator made the following bequest in his will: "I give, devise, and bequeath to my dearly-beloved wife all the stock-in-trade, furniture, mourning coaches, horses belonging thereto, stones, marbles, tools, implements, and materials connected with my trade and business, and all my right and interest therein; and after payment of my debts and other expenses, I give, devise, and bequeath the rest and residue of my outstandings and collections for her sole use and benefit, with liberty to continue and carry on such trade and business." The testator's widow married a second husband, and they carried on the business of the deceased together. They afterwards separated, and she brought a suit against her husband for a declaration of her right under the will, and for an account from her husband of the profits, etc., of the business during their marriage. *Held* (reversing the decision of the Court below) that, on the true construction of the will, the stock-in-trade, etc., was not bequeathed to the wife for her sole and separate use independent of any future husband; her husband did not become a trustee for her in respect of such stock-in-trade or the profits of the business, and he was not bound to render an account. ORD *v.* ORD

[4 B. L. R., O. C., 53

65. ———— Dedication to religious purposes—*Rule against perpetuities.*—If there is a valid dedication of premises for religious purposes, this is not invalid merely because it transgresses against the rule forbidding the creation of perpetuities. BHUGGOBUTTY PROSONNO SEN *v.* GOOROO PROSONNO SEN . . . . I. L. R., 25 Calc., 112

66. ———— Charitable bequest—*Bequest for spiritual benefit—Uncertainty—Superstitious uses.*—*N E J*, a Hebrew merchant domiciled in Calcutta, and possessed of both real and personal property, died, leaving a will, by which, after appointing his mother, *K E J*, and his brother, *J E J*, executrix and executor thereof, and making various bequests and provisions, he made the following bequest of the residue of his property: "And

WILL—*continued.*

9 CONSTRUCTION—*continued*

what may remain after payment of the above-mentioned sums as well as the debts, shall remain under the control of my brothers, *S F J* and *J E J*, for the purpose of defraying therewith the expenses for the year, and making charitable distributions as commanded and giving alms for my spiritual benefit according to their judgment" *Held*, assuming that the High Court should act in conformity with the English Court of Chancery in carrying out charitable bequests that, as far as the bequest related to giving of alms for the testator's spiritual benefit, it was void for uncertainty The "defraying expenses and making charitable distributions" were limited by the bequest to the year within which the testator died. JUDAH v JUDAH . . 5 B L R, 433

67. ———————— *43 Eliz, c. 4—Mortmain, Statutes of—Hospital—Clause prohibiting alienation*—A testator left his personal property to trustees in trust to pay thereout certain annuities to his son and daughter, and, after bequeathing some pecuniary legacies, devised certain immoveable property to the trustees in perpetuity in trust for the support of hospitals in the North-West Provinces, with directions that the surplus income (if any) from his personalty during the lives of his children, and on the death of either of them

payment of the legacies to pay the annuities to the testator's children, and that the immoveable property was greatly in need of repairs and did not produce enough for the support of the hospitals or to enable the trusts of the will relating thereto to be carried out *Held* that the devise for the support of the hospitals was a valid devise, and one to which the Court would give effect, as being a charitable trust within the scope of 43 Eliz, c 4 The statutes of Mortmain not applying to India, the Court will carry out such a trust when the subject is immoveable property, just as it would if it had been personal property *Held* also that, if the prohibition against sale were a valid one, the Court could not order a sale merely because it would be advantageous to the charity that the property should be sold, but held that the prohibition against sale was void as being repugnant to the devise, and, notwithstanding such prohibition, the trustees had power to sell, or otherwise alienate the property for the purpose of maintaining the hospitals. BROUGHTON v. MERCER [14 B. L. R., 442

68. ———————— *Void bequests—Uncertainty—"Surplus"—General residuary bequest* A testator by his will directed as follows "I do hereby direct my trustee to feed the really needy and poor at Bo erathjee out of a separate expense out of my estate, to be contributed to the worship of Lukeejona danjee, my ancestral goddess. I do direct my trustee to spend suitable

WILL—*continued.*

9 CONSTRUCTION—*continued*

sums for the annual sradhs or anniversaries of my father, mother, and grandfather as well as of myself after my demise, for the performance of the ceremonies and the feeding of the Brahmins and the poor; to spend suitable sums for the annual contribution and gifts to the Brahmin Pundits holding tolls for learning in the country at the time of the Doorga Pooja; to spend suitable sums for the perusal of Mohabharat and Pooran and for the prayer of God during the month of Kartick Should there be any surplus after the above expenditure, then I do hereby direct my trustee to spend the said surplus in the contribution towards the marriage of the daughters of the poor in my class and of the poor Brahmins, and towards the education of the sons of the poor amongst my class and of the poor Brahmins, and other respectable castes, as my trustee will think fit to comply" *Held* that the gifts were valid testamentary bequests and that the words "should there be any surplus after the above expenditure" created a general residuary bequest *Held*, on appeal (affirming the decision of the Court below), that a general residuary bequest was created by the concluding words of the clause which would absorb any of the preceding bequests if they should happen to be invalid *Quære*—Whether the bequests to pundits holding tolls, and for the reading of the Mohabharat and Pooran and for prayer to God were valid. DWARKANATH BYSACK v. BURRODA PERSAUD BYSACK . I L. R., 4 Calc., 443

69 ———————— *Cy près Doctrine of*—A testatrix bequeathed the interest of a Government promissory note to "The Calcutta Armenian Orphans' College Funds for the relief and enjoyment of the Poor Families Widows Orphans and Schools of the Armenian Nation" to be received half-yearly by the wardens of the funds for the time being Although there was a charity in Madras, called "The Armenian Orphans' College," there was none in Calcutta or elsewhere answering the description of the Calcutta Armenian Orphans' College, but there were two and only two charitable institutions in Calcutta which provided for the relief and enjoyment of the poor families widows orphans, and schools of the Armenian nation. Of these, one, the Church of St Nazareth distributed money amongst, and gave relief to the poor families widows and orphans of the Armenian community; and the other, the Armenian Philanthropic Academy, educated gratuitously the poor and orphans of the same community. The note was invested by order of the Court, and there had been a large accumulation of interest thereon. The governors of the two institutions concurred in asking that each should receive a moiety of the accrued and future interest of the fund. *Held* that the cy près doctrine applied; that the accumulated interest should remain invested; but that the accruing interest on the accumulated fund should be paid half yearly, one moiety to the wardens of St Nazareth's Church and the other to the managers of the Armenian Philanthropic Academy. [illegible] v. PATON . . . . . . 1 Mad., 420

WILL—*continued.*

9. CONSTRUCTION—*continued.*

70. ———— Failure of object—*Cy près performance—Construction of will.*—The doctrine of *cy près* as applied to charities rests on the view that charity in the abstract is the substance of the gift, and the particular disposition merely the mode, so that, in the eye of the Court, the gift, notwithstanding the particular disposition may not be capable of execution, subsists as a legacy which never fails and cannot lapse. It cannot be laid down as a general principle that the *cy près* doctrine is displaced where the residuary bequest is to a charity, or that among charities there is anything analogous to the benefit of survivorship, since cases may easily be supposed where the charitable object of the residuary clause is so limited in its scope, or requires so small an amount to satisfy it, that it would be absurd to allow a large fund bequeathed to a particular charity to fall into it. On the failure of a specific charitable bequest, jurisdiction arises to act on the *cy près* doctrine, whether the residue be given in charity or not unless upon the construction of the will a direction can be implied that the bequest, if it fails, should go to the residue. In applying the *cy près* doctrine, regard may be had to the other objects of the testator's bounty, but primary consideration is to be given to the gift which has failed, and to a search for objects akin to it. The character of a charity as being for the relief of misery in a particular locality may guide the Court in framing a *cy près* scheme to benefit that locality. Unless the *cy près* scheme framed by the lower Court be plainly wrong, a Court of Appeal should not interfere with it. MAYOR OF LYONS *v.* ADVOCATE GENERAL OF BENGAL

[I. L. R., 1 Calc., 303: 26 W. R., 1 L. R., 3 I. A., 32

71. ———— Charitable gift—*Cy près doctrine—Lapse—Construction of will.*—A testator directed his executor to set apart a sum of R7,000 to provide a fund for or towards the education of two or more boys at St. Paul's School, Calcutta, such boys to be natives of Calcutta, of poor and indigent parents, or fatherless children of Armenian or other Christian religion. The testator died in 1867. In 1864 the St. Paul's School, Calcutta, was removed to Darjeeling. In the St. Paul's School, Calcutta, the fees for day scholars and day boarders were R8 and R10 respectively. In the St. Paul's School, Darjeeling, there were no day scholars nor any day boarders; and the cost of a regular boarder would be about R400 per annum. *Held* that the gift did not lapse, being a general charitable bequest, and that under the circumstances it must be executed *cy près.* MALCHUS *v.* BROUGHTON

[I. L. R., 11 Calc., 591

72. ———— *Gift—Cy près, Doctrine of—Lapse of legacy—Costs.*—Under the will of *A*, who appointed the Administrator-General of Bengal his executor, *B* had a life-interest in the residue of the testator's estate. *B* brought a suit against the Administrator-General to have it declared that a pecuniary legacy, given under the will, had lapsed and fallen into the residue. Prior to the hearing it was agreed between *B* and the Administrator-General that the costs of the suit should come out of the testator's estate; this agreement was embodied in a consent order obtained on the application of the plaintiff. The suit was dismissed, and this decision was affirmed on appeal. On the question of costs,—*Held* that the estate of the testator not being before the Court, the agreement as to costs could not be carried out, and that the plaintiff must pay the costs of all parties to the suit. MALCHUS *v.* BROUGHTON . . . **I. L. R., 13 Calc., 19[...]**

73. ———— *Appointment of trustee—Failure to carry out wishes of testator.*—Where a testator had made a bequest for charitable purposes and had made no express provision for the management of the charitable trust so created, except by directing that, in the event of his heirs failing to carry out his wishes in respect of the trust fund, the Civil Court should take the fund and the management of the trust summarily into its own hands,—*Held* that, in the absence of misconduct the widow, and not the Collector, was the proper person to be appointed trustee. HORI DASI DABI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 5 Calc., 228: 4 C. L. R., 77

74. ———— *Bequest to charity—Public charity—Trusts affecting land—Perpetuity—Parsi religious ceremonies: baj razgar, nirangdin, yezashni, ghambar, and dosla—Civil Procedure Code (Act XIV of 1882), s. 527.*—A Parsi by his will directed that the income arising from a one-third share of a bungalow in Bombay, to which he was entitled, should be devoted in perpetuity to "the performance of the baj rozgar ceremonies and the consecration of the nirangdin and the recitation of the yezashni and the annual ghambar and dosla ceremonies." He further directed that the said share should not be sold or mortgaged. Evidence was given, which showed that the above-mentioned religious ceremonies were performed among Parsis rather with a view to the private advantage of individuals than for the public benefit. *Held* that the trusts of the will were void, and that the direction that the property should not be sold was invalid. LIMJI NOWROJI BANAJI *v.* BAPUJI RUTTONJI LIMBUWALA . . **I. L. R., 11 Bom., 441**

75. ———— *Bequest to a person with a direction that it should be used in good works (sárá kám)—Direction void as being vague and indefinite—Succession Act (X of 1865), s. 125.*—A testator left a legacy to his wife in the following terms: "R2,000 to be credited in our shop in the name of my wife Bai Bapi. Interest at 6 per cent. to be paid to her every year. If in her lifetime she demands the money to use in a good work (sárá kám), it should be given to her, but if she has not taken it in her lifetime, Jamnadas and Bhagubhai are to dispose of it according to their own pleasure after death." *Held* that this was not a bequest in favour of good works (sárá kám), but a bequest to the testator's wife, with a direction to use it in good works (sárá kám), and as that direction was

WILL—*continued*

9. CONSTRUCTION—*continued*.

void for uncertainty, she was entitled to the money as if the will had contained no such direction BAI BAPI *v.* JAMNADAS HATHISANG

[I. L. R., 23 Bom., 774

76. ———— Children—*Domicile—Rules for interpretation—Accretions to property from rents* —Where a testator has an ascertained domicile, the construction of his will must depend on the law of that domicile; but if no particular law is applicable, the will is to be interpreted by principles of natural justice. In such cases, in applying the rules of Hindu, Mahomedan, or English law to the wills of Hindus, Mahomedans, or East Indian Christians [illegible] ...ng circumstances, children may be interpreted as illegitimate children. Where by the will the income of estates was left to devisees for life, with a gift over of the corpus on their death, and a portion of the income, instead of being divided among the tenants-for-life, was applied to the purchase of other estates, —*Held* those estates did not pass to the remaindermen, but formed the absolute property of the tenants-for-life, and passed to their devisees. BARLOW *v.* ORDE 5 B. L. R., 1: 13 W. R., P. C., 41

[13 Moore's I. A., 277

77. ———— Contingent gift—*Puttro poutradi, Meaning of—Absolute estate* —A Hindu, *R L M*, died in 1874, leaving a widow, *K K D*, a daughter's daughter, *H D D*, and a brother, *R L M*, with whom he was on bad terms. By his will, which was made on the 9th of August 1870 and at a time when there was no reason to abandon all expectation of his leaving male issue of his own, *R L M* directed that, in the event of his dying without leaving a son, grandson, or son's grandson, *his widow*, *K K D*, should take the whole of his estate according to the shastras, and enjoy the profits thereof for her life, and that on her death, in the event of a daughter or daughters having been born to him, then she or they, and on the death of her or them, then her or *their son or sons (the testator's daughter's sons)* should in like manner take and become the owner or owners of the estate according to the shastras, and that in the event of there being no daughter or daughter's son of the testator living at the time of the death of his widow, then his granddaughter (*daughter's daughter*), *H D D*, *should take the whole estate absolutely from generation to generation* [illegible] purpose. The main object of the testator *R L M* in making this disposition of his property was admittedly to exclude *R L M* from the inheritance. *Held* that *H D D*, if she survived the testator's widow *K K D*, and was not then a barren or childless widow or otherwise disqualified, would take, not a life-interest, but an absolute estate, to the exclusion of *R L M*. *Held* also that the words "puttro poutradi" had generally the effect of denoting the estate given as an estate of inheritance, and did not by themselves necessarily denote that the estate given was to be one descendible to heirs male only. *Held* also that in case of *H D D* not surviving *K K D*, or of her being at the time of the death of *K K D* for any reason disqualified from taking the estate, then upon the death of *K K D* the gift to the Government of the reversion to the exclusion of *R L M* would take effect, and was a good and valid gift. HORI DASI DABI *v.* SECRETARY OF STATE FOR INDIA IN COUNCIL

[I. L. R., 5 Calc., 228: 4 C. L. R., 77

78. ———— *Gift to children on their attaining 21* —Where words of contingency form part of the description of the class of persons to take, as in the case of a gift to those "who shall attain the age of 21," the words must receive their natural construction, and no estate vests in any one till he attains the prescribed age. In such a case there must be something in the context pointing to a different construction, or something in the will inconsistent with the literal construction to justify a Court in adopting any but the literal construction. In the case of words of contingency occurring in the description of the class of persons to take a mere gift over is not sufficient to change their meaning. BALLIN *v.* BALLIN

[I. L. R., 7 Calc., 218: 8 C. L. R., 23

79. ———— *Period of distribution—Survivorship*. *A*, a Hindu, made the following provisions by his will: "I have two sons living, *B* and *C*; they and an infant son of my eldest son, the late *D* and my wife *E* (four persons), shall succeed to the whole of my estate; these four persons will receive equal shares. If any of these four persons happen to die, which God avert, the *survivor of them will receive this estate in equal shares*; but if there be a son or a grandson surviving as the heir and representative of the party dying, such survivor shall succeed to his share. If there be a daughter or granddaughter in the female line surviving, such survivor shall receive a share of the property; the expense of the marriage of such female child only shall be defrayed out of the estate," and also provided that "so long as my infant grandson shall not have attained his majority, the whole of my estate shall remain undivided." All the persons named survived the testator. *Held* that they took absolute interests in the shares named, and that the estate became divisible on the infant's attaining majority. BINODABEHARI DOSSEE *v.* D[illegible] . I. L. R., 5 Calc., 60

80. ———— ———— *Vesting of estate in executor—Directions to executors. Effect of*. A testatrix, after appointing certain persons to be executors of her will in respect of the whole of her property, directed that they should take possession of the whole of her property, and keep the same under

WILL—*continued.*

9. CONSTRUCTION—*continued.*

their protection;" that they should pay out of her estate the charges of interment, etc.; that they should repair four houses annually out of the income thereof, having let them out to hire, and after paying taxes and ground rent divide the proceeds every three months between the testatrix's two sons; that the executors should not give the rents to the creditor, because the bequest of the income to the sons was "not an entire gift to them, but a mere provision for their support." The will proceeded as follows: "Should my son *M* happen to die before the decease of his wife. then I give the share of *M* to his widow *H M*, etc., and after the death of *H M*, should my son *M* not have left any legitimate male child, then I give the above share to my son, *J*, etc. After the death of *M* (and his wife), should he have left legitimate male children, such male children shall in the same manner receive the income once in every three months till they attain the age of 21 years, and then the amount of their share shall be divided into equal portions, and each of them having become the owner of his portion shall receive the same from my executors, but if *H M* die before *M*, and *M* die without having had legitimate male children, then I give and bequeath the shares of my son *M* to my son *J* as a provision for his support, etc. If my sons *M* and *J* die without having male issue, and if their wives, that is to say, *H M* and *C J*, die without having male issue begotten by my sons, then I give my garden, etc., actually and entirely to the sons and daughter of my daughter *G*, begotten by her first husband *G A*, that is. to *A M B* and *N* or in case of their death to their sons and daughters lawfully begotten, or to such of them as shall survive at the time. My said garden shall be divided into equal shares, and each of them having received his share in equal proportion as a legacy from me, shall enjoy the same." *M* and *H M*, his wife, died without having left any children; *J* died in the lifetime of *M A*, and one of the sons of *G* died without leaving children in the lifetime of *H M*. *Held*, firstly, that the direction to the executors to lease the property indefinitely and out of the income to make repairs, pay taxes and ground-rent, and apply the rent to the maintenance of the sons, was sufficient to vest the legal estate in the trustees. Secondly, that such estate was an estate in fee. Thirdly, that the children of *G* took equitable estates in remainder in fee, defeasible in case of their death in the lifetime of the first taker for life, in which event there was substituted a devise to their children in fee. Fourthly, that the children of *G* took as tenants-in-common, and not as joint tenants, and therefore that, as there was nothing from which cross remainders between the children of *G* could be implied, the share of *A* reverted to the heir at-law of the testatrix. Fifthly, that wherever any estate in fee is devised to a trustee in trust without any limitation of the estate of the *cestui que trust*, the latter takes the beneficial estate in fee. SHIRCORE *v.* ADMINISTRATOR-GENERAL . . . . 1 Ind. Jur., O. S., 50

81. ——— *Gift to children.*—A testator, after providing for payment of debt etc., directed that the whole of his property should be disposed of and the proceeds placed in the Oriental Bank with power to the executors to invest the same in mortgages, and to leave existing mortgages untouched. The will then contained this direction: "That a monthly stipend of R15 be paid to my daughter *E S* for her own benefit, and R20 for the benefit of her two children (during their minority), and in the event of the demise of any of the said children occurring, the sum of R10 to cease rateably as being the allowance for each child; that on each of the children attaining their age of majority, I request that my executors pay to each of them severally and proportionably the full amount of interest accruing from my estate (the existing provision for my two daughters to continue during their natural life), and after their demise the said interest in like manner to revert to their heir or heirs in succession." *Held*, firstly, that a direction to pay a monthly stipend to *E S* and *M D* respectively was simply a charge upon the testator's estate to pay the said stipends to *E S* and *M D* for their respective lives. Secondly, that *E S* and *M D* were severally entitled during the lifetime and minority of their children to a monthly stipend of R10 in respect of each child, such payment to cease upon the death of each child or on its attaining majority, till which latter event the said children took no interest under the will. Thirdly, each child upon attaining its majority took a share of the residue, proportioned to the number of children then living, and a contingent proportionate interest in the shares of each of the other children which would become vested on the death of each one dying under twenty. Fourthly, the limitation of the gift "during their natural life and after their demise, the said interest in like manner to revert to their heir or heirs in succession," did not prevent the children from taking their several shares absolutely under the will. *Semble*—The rule in *Wild's case*. 6 *Rep.*, 17, is not applicable to personalty. AGNEW *v.* MATHEWS

[1 Ind. Jur., O. S., 74: 1 Mad., 17

82. ——— *Gift over—No mention of time for the occurrence of specified uncertain event—Succession Act. (X of 1865), s. 111, ills. (d) and (e), Application of.*—A testator by his will bequeathed to one *K* a legacy with the proviso that if "after the expiration of nine years from my death . . . . *K* should die without son or grandson, then *M* shall get his (*K*'s) properties." The uncertain event, namely, the death of *K* without son or grandson, did not happen before the expiry of nine years from the testator's death, that is, before the period of distribution. *Held* that where a will fixes the nearer limit of time beyond which the specified uncertain event is to happen, but *does not* fix either any definite point of time at which or any further limit of time within which that event is to happen, it does not amount to the mentioning of a time for the occurrence of that specified uncertain event. That s. 111 of the Succession Act lays down a hard-and-fast rule regulating the

WILL—*continued.*

9. CONSTRUCTION—*continued.*

validity of certain classes of contingent bequests, which must be applied wherever applicable without speculating on the intention of the testator. *Norendra Nath Sirkar v. Kamalbasini Dasi, I. L. R., 23 Calc., 563,* followed That this case came under s. 111 of the Succession Act, and the gift over, that is, the legacy to *M*, could not take effect, as the specified uncertain event contemplated did not happen before the period of distribution, and that *K* took an absolute indefeasible estate in the legacy *Edwards v. Edwards, 15 Beav., 357; Tagore v. Tagore, 18 W. R., 359*, and *Soorjee Money Dassee v. Denobundoo Mullick, 9 Moore's I. A., 123,* referred to. That the language of the ills (*d*) and (*e*) does not control the hard and fast rule laid down by s. 111. MONOHUR MUKERJEE v. KASISWAR MUKERJEE MOHENDRO NATH MUKERJEE v. KASISWAR MUKERJEE . 3 C. W. N., 478

83. — — *Gift over on failure of prior devise*—A testator made the following disposition by his will "I appoint my [illegible]

age *In case my son dies before attaining proper age, all my estate and property should be taken possession of by my brother* My wife is to receive a Government 4 per cent promissory note for R1,000 as a legacy, and is to be maintained from my estate if she continues to live in our family dwelling-house under my brother's protection.' The child with which the widow was *enceinte* turned out to be a daughter. *Held* that the clause in italics was one purporting to give the property, and not only the management of it, to A, the power of management having already been given him in appointing him executor; that the provisions for maintenance of the widow, and for the marriage expenses of the daughter, tended to show (putting aside the legacies) that the widow and daughter were not to take the larger estate which they would have successively taken as heiresses, and that the wife of the testator having borne to him a son, and the apparent intention of the testator having been to give the estate to A, if the son did not take, or if the estate to the son failed by reason of his not attaining proper age, the gift over to A, on the principle laid down in *Jones v. Westcomb, 1 Eq. Cas. Abr., 245,* took effect on failure of the gift to the son, even though such failure was not in the precise manner expressed in the terms of the gift. OKHOYMONEY DASEE v. NILMONEY MULLICK . I. L. R., 15 Calc., 282

84. — — *Vesting—Period of distribution—Gift of dividends*—S, a Portuguese inhabitant of Bombay, by his will dated 12th March 1866, devised all his estate, real and personal, to his executors in trust to realize the same, and invest the proceeds thereof in the public funds, and directed as follows: "(1) The dividends arising therefrom shall be applied, at the discretion of my executors, towards the maintenance and education of my children until each of my sons attains the age of twenty-one years, when his or their share shall be paid unto him or them; (2) I desire further that whatever may be remaining, of the moneys collected by my executors, after all my sons shall have attained the age of twenty-one years, and after my daughters shall have been married shall be distributed, after deducting R2,000 as dowry given to two daughters, in equal parts between my sons and daughters that may be surviving at the time, (3) in case any of my children shall happen to die under twenty-one years, then I give and bequeath the share or shares of him, her, or them, so dying, unto the survivors or survivor of them." *Held* that the gift to the sons contained in the first clause, was a gift of his share of the dividends to each son on his attaining twenty-one years of age, and that by such gift his share of the corpus became vested in each son when he attained that age *Held* further that the provisions of the third clause which related to the distribution, did not divest the shares so vested. Clear words must be used to divest an estate once vested. *Held* also that only such of the daughters as were surviving at the period of distribution specified in the second clause of the will were entitled to a share in the estate DE SOUZA v. VAZ

I. L. R., 12 Bom., 137

85. — — *Vesting—Postponement of enjoyment—Accumulation until the age of thirty*—The testator by his will constituted his two disciples, S and J (aged eighteen and eleven years respectively), his heirs, "subject to the conditions written below," and he directed that out of the net income of his estate his trustees should expend R500 *every year for the maintenance of each* disciple, or pay that amount to each disciple every year, and that when J should attain the age of thirty years, the trustees should give to J the net residue of his property remaining at that time or in the case of J's decease, should give the same to S *Held* that the property vested in J on the testator's death, but only for a life-estate. *Held* also (reversing the decision of JARDINE, J) that the directions for postponement of enjoyment after the coming of age of the devisee must be disregarded, and that (subject to the payment of R500 a year to S) the income of the property (including all income accrued since his majority) must be paid to J, the trustees retaining the corpus until J should attain the age of thirty years *Gosling v. Gosling, Johns 265,* followed GOSAVI SHIVGAR DAYAGAR v. [illegible]

I. L. R., 19 Bom., 403

86 — *Perpetuities, Te capital—Superstitious uses—Trust for masses—Executor, Assent of—Vesting of legacy*—An Armenian died in Madras in 183 , leaving a will

WILL—*continued.*

9. CONSTRUCTION—*continued.*

whereby she appointed executors and bequeathed a certain sum "that the income thereof be given for perpetual masses for the benefit of my soul and for the souls in purgatory," and she also bequeathed, *inter alia*, R42,000 to her granddaughter for life, and provided that in the event of her marrying and having children she could bequeath to them the said R42,000, but in the event of her dying without issue, R14,000 out of the said R42,000 should be subtracted and given to her husband, and the remaining R28,000 should be added to the first-mentioned bequest, and the income thereof be similarly given for masses. The executor with probate gave effect to the first-mentioned legacy. By a settlement made in contemplation of the marriage of the granddaughter, the subject of the second legacy was settled as provided in the will except as to the R14,000, as to which it was declared that in the event of there being no issue of the marriage, and of the wife surviving the husband and dying without marrying again, it should be divided between the residuary legatees of the testatrix. The husband was a party to the settlement, as also was the executor of the testatrix who was one of the trustees of the settlement. The marriage having taken place, a suit was brought by the husband and wife against the trustees, and a decree was passed under which the trustees were relieved of their office, and the trust funds paid into Court with the direction that interest accruing thereon be paid to the wife until further order. The husband died without issue, and subsequently in 1890 the wife died, not having remarried. The Administrator-General of Madras took out letters of administration to administer the estate left unadministered of the testatrix, and the R42,000 above referred to were paid over to him. *Held* by SHEPHARD, *J.*, that the sum of R14,000 by reason of the settlement, but not otherwise, fell into the residue of the estate of the testatrix. *Held* by COLLINS, *C.J.*, and HANDLEY, *J.*, affirming SHEPHARD, *J.*, (1) that the sum of R28,000 formed unadministered assets of the estate of the testatrix; (2) that the bequest for masses was void as infringing the rule against perpetuities. COLGAN *v.* ADMINISTRATOR-GENERAL OF MADRAS

[I. L. R., 15 Mad., 424

87. ———————— *Succession Act (X of 1865), ss. 68, 105, 159—Trust fund to be called after testator's name—Perpetuities, Rule against—Creation of fund, and dispositions except directions for making it a perpetuity, held valid—'Personæ designatæ,' Bequest to persons as—Vesting of legacy, Time of—Income of fund, Gift of—Tenancy-in-common—Joint tenancy—Advancement out of minor legatee's share for his benefit, Power of—Vested interest, liable to be divested by condition subsequent—Precatory trust, Expression of wish held not to create—Patent deficiency as to objects of bequest—Failure of legacy—Charitable uses, void bequest to.*—Where by his will a testator directed the establishment in the Bank of Madras by the executor and trustee of the will, of a fund to be called after the testator's name, the "Garratt Trust Fund," and directed "that such trust fund shall never be removed from deposit in the said Bank of Madras at Madras so long as that Bank shall exist,' and "that 'The Garratt Trust Fund' shall be a continuing fund to all time," and that the interest therefrom should be enjoyed by certain legatees and "the same shall be inherited by any child or children of them hereafter from time to time and from one generation to another in accordance with all legal rights,"—*Held* that there was nothing illegal about the creation of this fund, except the direction that the securities representing it should never be received from deposit in the Bank of Madras, which, as an attempt to create a fund in perpetuity, was invalid; but that this did not prevent the intention of the testator to create and endow the fund from being carried out, and that the legatees took an absolute interest. The testator bequeathed "to my grandchildren by my said late daughter *E W*, also to my grandson *F W M* and to his step-brother *G W M*" in equal shares a certain fund. *Held* that this was a bequest to the testator's grandchildren by his late daughter *E W* not as a class, but to them individually as *personæ designatæ*. *Held* also that, under the terms of the will, the testator's said grandchildren by the late *E W* and *F W M* and *G W M* took vested interests in their respective shares in the said fund from the death of the testator; that the gift to them of "the benefit, interest and profit" of the fund was a gift of the corpus of the fund by virtue of s. 159 of the Indian Succession Act; that they took as tenants-in-common, not as joint tenants; and that under a power given to the executor to make disbursements from the said fund for certain purposes for the benefit of *F W M* in connection with his going to and returning from England the executor was not authorized to apply, towards those purposes, more than *F W M*'s one-ninth share in the said fund, as it was not the intention of the testator to give *F W M* a benefit out of that fund over and above that share, and that the executor, in making disbursements for the purposes specified, was only empowered to trench upon the principal of that share if the income, as applied under the power of disbursement for *F W M*'s support and maintenance in England, were not sufficient. *Held* also that under the terms of the devise in the third and fourth clauses of the will of a certain house and premises to *F W M*, the devisee took on the testator's death a vested interest in that property, liable to be divested in the event of his dying under the age of twenty-one years. *Held* also that under the terms of the devise in the fifth and sixth clauses of the will of a certain house and premises and furniture to the children of the testator's late daughter *E W* (who was dead at the date of the will), there was an absolute gift to the children of *E W* of the testator's whole interest in that property, and that such gift was not controlled by the directions in the latter part of the fifth clause that the house should not be sold until the youngest grandchild attained the age of eighteen years, which must be regarded

WILL—*continued.*

9. CONSTRUCTION—*continued.*

merely as an expression of the wish of the testator and not as a precatory trust, and was of no legal effect; and that the children of *E B* who were living at the testator's death did not take as joint tenants, but took as *personæ designatæ*, each an equal share in the property, which vested in them on the death of the testator, and therefore the share of one of them, *E G W*, who had survived the testator, but died subsequently, having vested in *E G W*, passed to *E G W*'s representative, the ninth defendant. In the sixteenth clause of the will the testator directed his executor and trustee out of a certain sum of R500 to "disburse various petty pensions to some poor people who have been mentioned to him" (the executor and trustee) "by me."

[illegible]

Reading Rooms for European pensioners and the Poor Widows' Quarters attached thereto being a bequest to charitable uses, was void under s. 105 of the Indian Succession Act, as the testator had nearer relatives than nephews, and the will was executed less than twelve months before his death. ADMINISTRATOR-GENERAL OF MADRAS *v.* MONEY [I. L. R., 15 Mad., 448

88. ———————— *Joint tenancy-in-fee—Life estate—Intention of testator—Restricted enjoyment, Direction as to.*—A testator devised his estate should his wife remain his widow, for the general [illegible] and any [illegible] wife [illegible] that, sh[illegible] have a full life-interest in the estate, and should not be annoyed with any vexation about shares during her lifetime, but that after her death her children and their descendants should take *per stirpes*, and in the event of his wife not remaining his widow and her child or children being living, then the estate should go for the general benefit of his children in equal shares when of the age allowed by law. And in the event of his said wife contracting a second marriage, and his children dying before marriage, and without children and under age, his wife should take half of his estate and the testator's brother the other half, and in the event of the brother dying without children, the testator's wife should take the whole estate. The testator's wife remained his widow until her death, her children having all predeceased her without being married. *Held* that the intention of the testator by the first devise was to give an absolute estate to his wife and children jointly, and that the remaining clauses of the will were merely intended to restrict the mode in which they were to enjoy the gift. HALIBURTON *v.* ADMINISTRATOR-GENERAL OF BENGAL . I. L. R., 21 Calc., 488

89. ———— *Duress—Forfeiture—Condition of residence.*—A testator by his will directed that if any of the female members of his family, either from misunderstanding or from any other cause, should live in any other than a holy place for more than three months, except for the cause of pilgrimage, they should forfeit their rights under the will. The plaintiff, a widowed daughter-in-law of the testator, and a minor, was removed from his house by her maternal relations and brother with the aid of the police, and resided for more than three months with her mother. *Held* that under the circumstances the plaintiff's absence did not work a forfeiture. *Clavering v. Ellison*, 7 *H. L. Cas.*, 707, referred to. TIN CORRI DASSEE *v.* KRISHNA BHABINI . . . I. L. R., 20 Calc., 15

90. ———— *Vested interest—Conditions repugnant—Condition restricting immediate enjoyment—Commission allowed to trustees, Calculation of.*—Where a testator who died in 1886 [illegible] allowed to enjoy it until the end of the year 1900, and appointed two trustees to carry out his wishes,—*Held* that the son took an immediate vested interest in the estate of the testator. *Held* also that the condition restricting immediate enjoyment was a condition repugnant and was invalid. *Gosling v. Gosling, John.*, 265; *Weatherall v. Thornburgh, L. R.*, 8 *Ch. Div.*, 261, followed. Where commission is allowed to trustees annually, such commission should be calculated on the income of the estate, and not on the corpus. LLOYD *v.* WEBB [I. L. R., 21 Calc., 44

91. ———— Absolute gift—*Repugnant gift over—Indefiniteness of gift—Reputed wife—Marriage, Proof of.*—On the construction of a will which was as follows: "I hereby declare all former wills cancelled. I desire that my wife should obtain possession of all my property and enjoy the benefit of all moneys that may accrue until her death, when I wish that whatever may remain shall be used for the education of the children of the Eurasian and Anglo-Indian community. I desire that this will be administered by the Official Trustee of Madras." *Held* (1) that the reputed wife should take under the will without strict proof of the marriage, no fraud being imputed to her in the matter of the marriage; (2) that the gift to the wife was absolute and the gift over bad for repugnancy. ADMINISTRATOR-GENERAL OF MADRAS *v.* WHITE . I. L. R., 13 Mad., 370

92. —— *Restrictions on legatees—Enjoyment—Residuary estate.*—Where a testator leaves a legacy absolutely as regards the estate, but restricts the mode of the legatee's enjoyment to secure certain objects for the benefit of the legatee, and where such objects fail, the absolute gift prevails, and does not fall into the residue of the testator's estate. Therefore, where a testator

WILL—*continued.*

9. CONSTRUCTION—*continued.*

gave legacies to certain of his grandsons and granddaughters, but nevertheless declared that such legacies should be held upon trust (as to the legacies to the grandsons) to invest the same and to apply the income during the minority of the legatee towards his maintenance and education, and upon his attaining the age of 21 years to pay him the income during his lifetime, and after his death to pay such income unto the widow of such grandson, and after the death of both of them to transfer the capital unto the child or children of such grandson as being a son or sons should attain the age of 21 years, or being a daughter should attain that age or marry, in equal shares as tenants-in-common; and where the testator especially provided as to the legacy left to one grandson that upon the happening of certain events it should be paid to his other grandchildren,—*Held* that the gift to the grandsons were absolute, and that the subsequent provisions were simply a qualification of the gifts for the benefit of the legatees; and that therefore, upon the death of one of the grandsons unmarried, his legal representative was entitled to the legacy left to him. ADMINISTRATOR-GENERAL OF BENGAL *v.* APCAR

[I. L. R., 3 Calc., 553

93. ——— Proviso for cessor—*Condition—Conditional limitation—Breach of condition—Residence.*—*P C T*, a Hindu, died leaving an only son, *G M T*, and having first made his will in the English form, whereby, after declaring that he had already made sufficient provision for his son *G M T*, and that *G M T* was to take nothing under the will, he gave all his property to trustees, upon trust, as to the personal estate, "to collect and get in the same" with certain specified exceptions, and thereout to pay his funeral expenses and debts, "and such legacies as were not by the will postponed in payment;" and to invest the residue, and out of the annual proceeds of such investments, so far as the same would extend, to pay certain annuities and postponed legacies as they became due, and to pay such surplus income as might from time to time exist to the person entitled to the beneficial enjoyment of the real property or the surplus rents or profits thereof, with an ultimate trust, after all the legacies and annuities had been satisfied, for the person or persons entitled to the beneficial enjoyment of the real property. And as to the realty, upon trust, until all the debt and legacies had been paid, and all the annuities had fallen in, to receive the rents, and thereout in the first instance to pay the unsatisfied legacies and annuities, and to pay the surplus rents to the person or persons for the time being to whom the real estate (subject to the devise to the trustees) was given by the will. And as a first charge on the net income of the real property (after satisfying the expenses of establishments), the testator directed the trustees to pay R30,000 per annum to the person for the time being entitled to the beneficial enjoyment of the real property or the surplus income thereof. He further directed them, after all the annuities and legacies had fallen in and been satisfied, to convey the real estate, so far as the then condition of circumstances would permit, unto and to the use of the person entitled, under the limitations contained in the will, to the beneficial interest therein. The first limitation was to *J M T* for life. At the end of the limitations of the real estate, the will contained the following proviso: "Provided always, and I hereby declare, if any devisee, or tenant-for-life . . . . shall permit or suffer the said property so devised and limited as aforesaid or any portion thereof, to be sold for arrears of Government revenue, or shall, after attaining his majority, cease to keep up in a due state of repair, and to use as his residence in Calcutta, the said baithakhana house and premises where I now reside, and make use of and enjoy my library, horses, carriages, farmyard, furniture in the said house, and jewels, gold and silver plates, etc., in my use or possession, then, and immediately thereupon, the devise and limitations in this my will contained and declared shall wholly cease and determine as to him, and the person next in succession to him under the limitations aforesaid shall at once succeed," as if the person committing a breach of such conditions had then died. The testator died in August 1868. In December 1868 his son *G M T* instituted a suit for the purpose of avoiding and setting aside the trusts and limitations of the will, except so far as they were for payment of debts, legacies, and annuities This suit was dismissed on the 1st of April 1869. *G M T* appealed, and on the 1st September 18[illegible]9 the Appeal Court declared him to be absolutely entitled to the personalty, subject to the trusts for payment of debts, legacies, and annuities, and entitled, on the death of the defendant *J M T*, the tenant-for-life, to the realty. *J M T* and others, claiming under the limitations in the will, appealed to the Privy Council; and *G M T* filed a cross-appeal, in which he claimed that the gift of the life-estate to *J M T* ought to be declared void. By the order of Her Majesty in Council which was dated the 9th August 1872, and which arrived in Calcutta in September 1872, all the limitations after the limitation to *J M T* were declared void and inoperative, and it was further declared that *J M T* was beneficially entitled to a life-interest in the realty, and also in the personalty directed to be conveyed or converted into a fund, subject to the payments in the will directed to be made, and to the provisions in the will not thereby declared to be void; and also until the legacies and annuities fell in and were satisfied, to R2,500 a month out of the net rents of the realty, and also to the surplus rents of the same and the surplus interest of the personalty; and that, upon the failure or determination of *J M T*'s life-interest, *G M T* was entitled as heir-at-law to the real and personal property. The proviso for cessor was not among the provisions of the will which were declared void. *J M T* was one of the trustees under the will. After the testator's death, the business of the estate continued, as theretofore, to be carried on in a portion of the baithakhana house; and *J M T*, who had a family dwelling-house of his own, used, up to November 1869, to attend at the baithakhana daily for the transaction of business.

WILL—*continued.*

9 CONSTRUCTION—*continued.*

In November 1869 *J M T* quarrelled with his co-trustees, and ceased to go to the baithakkhana In April 1870 he demanded from the other trustees that possession of the baithakkhana should be given to him, and upon their insisting on the right to occupy the portion of the baithakkhana used for the purpose of the estate business, sued them *for possession* In July 1870 a decree for possession was made in his favour The trustees appealed and ultimately, in July 1871, the Appellate Court made a declaration that it was consistent with the trusts of the will that *J M T* should enter into possession, and the trustees were ordered to deliver to him possession of the baithakkhana, except the portion of the ground floor occupied for the business of the estate After obtaining his decree, *J M T* found that the baithakkhana was in a very bad state of repair, and called upon the trustees to have proper repairs executed. On their refusal to do so, except under direction of the Court, *J M T*, in December 1871, brought a suit to compel them to effect necessary repairs; the trustees contested the suit, but in March 1872 a decree was passed directing them to make the repairs Subsequently repairs were begun, which were completed in October 1872 In a suit by *G M T* alleging that *J M T* had committed a breach of one or more of the conditions contained in the proviso for cesser by not residing in the baithakkhana house and by neglecting to keep it in repair, and had thereby incurred a forfeiture of which the plaintiff was entitled to take advantage, *Held* that the clause containing the provisions for cesser and shifting of the estate was intended to come into operation as a whole and not piecemeal, and therefore that, until *J M T* came into full beneficial enjoyment of the life-estate given him by the will, or at all events until he became entitled to the surplus rents the time had not arrived when that clause was intended to apply *Held* further that assuming that such time had arrived, the action of the plaintiff, in contesting the right of *J M T*, under the will, to occupy the baithakkhana house and premises debarred him from claiming that effect should be given to the clause of forfeiture for non-residence Even apart from any action by the plaintiff, the conduct of the trustees in disputing the right of *J M T* to possession of a portion of the baithakkhana house, and refusing to repair, would suspend the operation of the forfeiture clause until October 1872, inasmuch as it prevented him until that time from obtaining such a possession as was contemplated by the forfeiture clause The [illegible]

GANENDRO MOHUN TAGORE *v.* JUTTENDRO MOHUN TAGORE . . . 12 B. L. R. 1

On appeal to the Privy Council,—*Held* that, as the clause provided for the cesser and determination of the life-interest of *J M T* in the event of the conditions in it not being performed, his interest, notwithstanding the conditions over had been declared to be void, would cease when that event happened. *Held* that the clause could not be construed so as virtually to defeat it and therefore it must be held to be operative before the trusts of the will were at an end, and *J M T*'s estate perfected by a conveyance But held on the evidence that there had been no breach of the condition contained in the clause *The delay in not residing before October 1872 was not unreasonable* Where in a condition of residence, no manner or period of residence is prescribed but residence simply and without definition, exclusive residence is not supposed to be meant; in such cases the occasional use of a house and keeping an establishment in it with the intention of again using it as a residence is a sufficient compliance with the condition GANENDRO MOHUN TAGORE *v.* JUTTENDRO MOHUN TAGORE

[14 B L. R., 60: 22 W R., 377 L. R., 1 I. A., 387

94 ——— Power of appointment—*Execution of power—Marriage settlement*—A testator after giving certain specific bequests disposed of his property as follows "I request that the interest of my property invested in Government securities be disposed of from time to time as follows First to my dear son A two shares to my two dear daughters *B* and *C*, each one share; the interest to be paid to them quarterly or half yearly as may be most convenient Second I request that these shares shall not be transferable during their lifetime. Third at the demise of any of my children without issue any such share to be divided in the above proportion to the survivors Fourth, in the event of issue, they may bequeath their share to any one of their children they may select subject to the above conditions" *C* married in 18[illegible]4 and by a settlement made in consideration of the marriage her share was assumed to be assigned to trustees upon certain trusts. In 1873 *C* and her husband made the following joint will "We do hereby constitute the survivor of us to be executor or executrix in our estate and sole heir of the same together with the child or children begotten by us [illegible]" *C* died shortly after the execution of the above will, leaving one child In a suit by *C*'s husband and the trustees of the settlement of 1874 for the administration of the testator's estate and for the construction of his will—*Held* that the settlement of 1874 could not operate upon *C*'s share in consequence of the direction of the testator that it should not be transferred in the lifetime of *C* and that the plaintiffs took nothing under the settlement. *Held* also that the power of appointment given by the will of the testator had not been properly exercised by the joint will and that the child of *C* took the whole of her mother's share FERGUSSON *v.* [illegible]

[I. L. R., 4 Calc., 511

95 — *Gift of income for life with power to appoint—Invalid power of appointment—Gift over in default of appointment—Gift of residue equally between two sons and then to next-of-kin*—A Parsee testator devised a certain house to his executors on trust after payment of repairs, etc., out of the income thereof to pay the

WILL—*continued.*

9. CONSTRUCTION—*continued.*

balance of such income to his daughters, *C* and *J*, in equal moieties, and after their death "to the use of such of the issue only of the said *C* and *J* as they should respectively appoint, such appointment to affect their own respective moiety only and not that of the other of them," and in default of appointment on trust to sell the house and divide the proceeds as directed in the will. *Held* that each daughter took half the house in question for her life with power to appoint it among her children as she thought fit. Even if the power to appoint had been invalid, the gift over on default should be upheld, on the authority of *Peacock v. Frigout, L. R. (1893) 1 Ch., 54.* A Parsi testator by his will bequeathed the residue of his moveable property to his executors in trust out of the income thereof to apply the sum of R50 for the maintenance of his son *R* until he should attain 21 years of age and to invest the surplus of such income in Government securities, which should be added to the original corpus of his moveable property for the benefit of his said son *R*, and upon his attaining the age of 21 to pay over to him "the whole of the interest, dividends, and produce only of the corpus of the whole of the moveable property," and after the death of *R* in trust to divide the said corpus of the moveable property with all its additions and accumulations among the next-of-kin of the said *R*. By a codicil subsequently executed the testator directed that the above bequest should extend and be applicable to his son *N*, and that the executors should divide the income of the moveable property between *R* and *N* instead of giving the whole to *R*. The Court was of opinion that, under the will and codicil, *R* and *N* were each to have a moiety of the income for their respective lives, and that on their death one moiety of the corpus was to go to their next-of-kin. The Court, however, declined to make a declaration to that effect, as *R*, who at the date of suit was unmarried, might afterwards marry and have children, who would not be bound by a declaration made in this suit. BYRAMJI JEHANGIR LAMNA *v.* RATNAGAR JAMSETJI RATNAGAR . I. L. R., 18 Bom., 1

96. ——————— *Bequest of power of management to widow and daughter for life—Estate—Gift to two persons as joint tenants or tenants-in-common.*—*N W*, a Parsi, died in 1843, leaving a widow *A* and a daughter *M* and two grandsons (sons of *M*) him surviving. By his will (written in the Gujarati language) he directed that during her life his widow and daughter were "to agree together and to manage the affairs with unanimity," and after *A*'s death he gave the whole power over his estate to his daughter *M* "and so long as *M* enjoys her natural life, everything is to remain with her." The will then continued: "After the death of *M*—*M* has two sons, namely, Bhai Navroji and Bhai Nusserwanji—these two boys are the owners of whatever property and estate there may be belonging to me. They are considered as my children. No one is to offer them any hindrance or impediment. I have presented all to my wife and to my daughter, *M*." *Held* (confirming FULTON, *J.*) that *A* and *M* took only a life-interest in the estate. (2) (Varying the decree of FULTON, *J.*) that *M*'s two sons took the estate as joint tenants subject to the life-interests of *A* and *M*, and not as tenants-in-common. NAVROJI MANOCKJI WADIA *v.* PEROZBAI . . I. L. R., 23 Bom., 80

97. ——————— **Gift in remainder expectant on termination of estate for life**— *Devise of talukh—The Oudh Estates Act, I of 1869—Registration—Acceleration of remainder on failure of life-estate.*—A gift in remainder expectant on the termination of an estate for life does not fail, but is accelerated by reason of gift of such prior life-estate not taking effect. The principle of the decision in *Lainson* v. *Lainson, 5 De Gex, M. & G., 754 : 18 Beav., 1,* held applicable to a will made by a Hindu testator. A talukhdar, whose talukh was entered in the third of the six lists prepared in conformity with s. 8 of "The Oudh Estates Act," I of 1869, devised his estate by a will, which was not registered to one of his wives for life, and after her death to his younger son by her. *Held,* as a consequence of the above rule, that it was not necessary to decide, upon a claim by the elder son as heir-at-law, whether the widow, as a person "who would have succeeded to an interest" in the talukh, if the talukhdar had died intestate, would have been within the exception, in reference to the effect of non-registration of will contained in s. 13 of the same Act. AJUDHIA BAKSH *v.* RAKMAN KUAR

[I. L. R., 10 Calc., 482 : L. R., 11 I. A., 1

98. ——————— **Vesting of interest**—*Divesting—Executory trust.*—*H*, by his will, bequeathed to his daughter *A M H*, "on her attaining her 18th year, the sum of Company's R10,000, with any interest that may have accrued thereon, if she marries, to be settled upon herself and children solely; should she die unmarried, her money to be equally divided between her brothers; and if either of them die, the whole of deceased's money to go to the survivor." *Held* that *A M H* (who had attained her 18th year) had a vested interest in the legacy subject to be divested upon her dying at any time unmarried, and further, subject to an executory trust in favour of her children in the event of her marrying at any time, and therefore that she was not entitled to have the capital of the legacy paid to her. IN THE MATTER OF THE WILL OF HUNTER. IN THE MATTER OF ACT XXVIII OF 1866

[I. L. R., 4 Calc., 420

99. ——————— *Interest not subject to be divested.*—A testator nominated *A B*, etc., "to be executors and trustees of this my will, and eventually guardians of my dear children and estate, until such time as my children shall severally attain the age of 25 years, when I request the aforementioned gentlemen (my wife being dead), their heirs or executors, will divide, or cause to be divided, into shares agreeably to the number of our surviving children, giving to the boys two shares and to each of the girls one, or to their lawful issue or husband, the whole of my estate, each child to be put in

WILL—*continued.*

9 CONSTRUCTION—*continued.*

possession of his or her share when they shall respectively attain the age of 25 years; and whenever either of my daughters shall enter into the holy state of matrimony, I request that a proper settlement may be made upon her and her children, and in the event of either of my children departing this life without leaving husband, wife, or lineal descendants or her share shall be divided equally amongst our other children or their lawful issue; but on no account shall any division of the principal of my estate take place till after the death of their mother *Held* (reversing the decision of PHEAR, J.) that after the mother's death, each child took a vested interest on attaining the age of 25 years,—that is, at the time when possession is to be given —and not an interest subject to be divested in the event of the child dying without husband, wife, or lawful issue TAYLOR *v* PHILLOTT PHILLOTT *v* MORRIS 1 Ind. Jur., N. S., 375

100 *Divesting clause —Gift over on legatee's death "prior to division" of the estate—Gift not void for uncertainty—Act X of 1865 (Succession Act), ss 75 91, 106* —A testator directed his trustees and executors to hold his real and personal estate upon trust to sell the real estate either together or in parcels, and either by public auction or private contract, and to call in, sell, and convert into money such part of his personal estate as should not consist of money, and to divide the said moneys, and the ready money which might belong to such estate, amongst the several persons named in the schedule to the will, and to pay the same to them in the shares and proportions therein mentioned, as and when they should respectively attain the age of 21 years in the case of males or, in the case of females when they should respectively attain that age or marry He directed that, in the event of any of such persons dying in his lifetime, or at any time thereafter "prior to the said division," leaving lawful issue, such issue should be entitled to the share which their deceased parent would have taken One of the legatees who had attained the age of 21 years at the testator's death died five months after him, before payment of the legacy and left lawful issue *Held* that the legacy vested in interest in the legatee at the testator's death, but that the legatee having died prior to the division of the estate it became divested, that the "division" of the testator's estate meant, in this will the ascertainment of the amounts allottable to the share of each legatee, after the conversion of the estate into money; and that the gift over in favour of the legatee's issue was not void for uncertainty, but took effect *Johnson v Crook, L. R., 12 Ch. D., 639; Collison v Barber, L. R., 12 Ch D., 834; Bubb v Padwick, L. R., 13 Ch D., 517 Chalton v Seago, L. R., 18 Ch D., 218; Spencer v Duckworth, L. R., 18 Ch D. 634*, referred to. BACHMAN *v* BACHMAN [I. L. R., 6 All., 583

101. — *Bequest to orphans in Military Orphan Asylum—Directions to trustees* —A special case was stated for the opinion of the Court as to whether *S M* took a vested interest in the sum of Rs 325 under the following clause of will "I paid to the M O Society Rs 600 for *S M* and invested Rs 825, the interest on which I directed to be paid to the mother of *S M* Now I direct my trustees after the death of the mother of *S M*, to realize the latter sum and pay it to the M O Society, for *S M* in terms of the regulations of the Society." *Held* that the bequest was *primâ facie* for the benefit of the daughter That having regard to the regulations of the M O Society, the bequest was a gift for the benefit of the Society generally That if the will had given the mother the interest for life, instead of saying it had been given, it would have vested. That the interest vested in *S M* at once and formed part of her estate IN THE MATTER OF THE GOODS OF COLLINS [Bourke, O C., 104

102. — *Gift of life interest or corpus—Discretion of executors to hand over corpus—Costs* —*C*, a Portuguese inhabitant of Bombay died in April 1864 leaving three sons, *M S* and *J* (defendant No 3) and two daughters *I* and *C* By her will she directed that her daughter *F* should enjoy the rents and profits of certain immoveable property for her life, and that after her death the said property should be sold and the sale proceeds (after payment of two legacies thereout) be divided equally between her two sons *S* and *J* The seventh clause of the will was as follows "7 I further direct that the amount which may fall to the share of my son Joaquim Amador Bocarro under (c) of paragraph 6 above should be held in trust by my executors hereinafter named and converted by them into Government securities; the interest accruing therefrom should be paid for the maintenance of my said son Joaquim Amador Bocarro. Should my said son die leaving a widow or issue, his share shall be given to such widow or issue according as he may devise and bequeath. Should my said son Joaquim Amador Bocarro reform himself, and take off all his evil tendencies and lead a steady quiet, and orderly life, or should he on account of illness or other reasonable cause, be in urgent need of pecuniary assistance I leave it to the discretion of my executors either to make over to my said son Joaquim Amador Bocarro for his absolute use the whole of the amount which he may be entitled to under (c) of paragraph sixth above or such part or parts thereof as to my executors may appear proper" *S* died in 1885, unmarried and intestate, leaving his two brothers *M* and *J* and his two sisters *I* and *C* him surviving [illegible] died in 1887 leaving a widow and children In 1881 *J* [illegible] all his interest under the said will to the [illegible] to secure a loan of [illegible] In 1893 *I* died and in 1895 *C* died. [illegible] the executors were proceeding to sell the property mentioned in the will when the plaintiffs filed this suit praying for a declaration that they had a valid charge upon *J*'s interest therein and that [illegible] interest should be ascertained and declared, and [illegible] be ordered to pay the amount of their claim; that the property should be sold and their claim paid out of the [illegible] that

WILL—*continued.*

9. CONSTRUCTION—*continued.*

the executors should be restrained from selling, save subject to their (plaintiffs') rights, etc. The plaintiffs and *J* contended that he (*J*), in the event that had happened, was entitled to the whole of the proceeds of the property absolutely, and that the gift in the sixth clause of the will could not be cut down by the provisions of the seventh clause. *Held* (1) that the defendant *J* had no interest in the house mentioned in the will. He was only entitled to a share of the proceeds after it had been sold. (2) That his interest in his share of such proceeds was merely a life-interest, with power to appoint to his widow or issue, and that he was not entitled to be paid the corpus of such share, but that the executors might, under certain circumstances and at their discretion, hand over to him the said corpus. (3) That neither the plaintiffs nor *J* could interfere in the sale of the said property. (4) That the plaintiffs had a valid charge upon *J*'s interest in the sale-proceeds of the said property to the extent of their mortgage. (5) That *J*'s interest was (after deducting the legacies given by the sixth clause) an absolute interest in one-fourth share of *S*'s moiety and a life-interest in his (*J*'s) moiety, subject to the contingency of the executors in their discretion handing over the corpus of the share, or part thereof, for his absolute use, in which event the plaintiffs had the right to the same so far as their debt was unsatisfied. (6) As to costs, the plaintiffs and third defendant *J* should pay their own costs; that the executors and defendants Nos. 4 to 12 should have their costs paid out of *J*'s share in *S*'s moiety of the sale-proceeds, and if that fund were not sufficient to pay such costs, the plaintiffs and the third defendant *J* to pay the deficiency. BECHAR AKHA *v.* DE CRUZ . . I. L. R., 19 Bom., 221

Held in the same case on appeal, confirming the decree of the lower Court, that under the above clause of the will there was a clear gift to the wife or issue of *J*, but that *J* was to have the power of designating how they were to take. To that extent the absolute gift to *J* was qualified. Should the gift over fail, the absolute gift to *J* would remain unimpaired. *Held* as to the costs (varying the decree of the Court below) that the executor's costs taxed as between attorney and client, be paid out of the estate as well as the costs of the defendants 4 to 12. Plaintiffs and *J* to bear their own costs respectively: plaintiffs to be at liberty to add their costs to their mortgage-security. In other respects the decree of the lower Court to be confirmed with costs other than the costs of defendants 4 to 12 whose costs may be added to their costs in the Court below. BECHAR AKHA *v.* DE CRUZ . I. L. R., 19 Bom., 770

103. ——— *Bequest to executors and trustees in trust for son of testator and his widow—Life-interest—Estate in fee—Control and management of executors and trustees.*—A Hindu by his will bequeathed certain property to his executors and trustees "upon trust for my son *T* and his heirs from the time of my death to allow him to occupy and use the same, and to enjoy the income thereof, and after the death of my son *T*, in trust to allow his widow to occupy and use the same and enjoy the income during her life; but if the said *T* shall die without leaving male issue him surviving, then in trust after the death of the survivor of them without leaving such male issue to my son *T* and his heirs according to the rules of Hindu law." The sons *T* and *P* both survived the testator, and *T* had a wife and three sons living at the date of suit. In a suit by the executors and trustees against *T* for construction of the will, *T* contended that, under the above clause, he was absolutely entitled to the property subject to the interest of his widow for her life. The plaintiffs contended that *T* had only a life-interest in the property. *Held* that the defendant *T* took only an interest for life in the property. The words "in trust for *T* and his heirs," which, standing alone, would give the property in fee, were to be read with the words immediately following, which showed a clear intention that *T* should only take a life-interest, to be followed by the same interest in his widow, after whom the heirs of *T* would take as purchasers. *Held* also that the trustees were intended to take the legal estate and to have the control of the property, allowing *T* to enjoy the income of it. SMITH *v.* TRIBHOVANDAS MANGALDAS [I. L. R., 19 Bom., 401

104. ——— *Bequest to wife with obligation of maintaining and educating children—Interest taken under such bequest.*—*B* died in 1891 leaving a widow (defendant No. 1) and two sons, *P* and *D* (defendants Nos. 4 and 5). By his will he bequeathed the residue of his property to trustees (of whom his widow was one) in trust to pay the rents and income thereof to his widow for life, "she thereout maintaining, educating, and bringing up" his children in a manner suitable to their degree in life. After his death, the property, moveable and immoveable, was to be divided among his sons equally when *D* should attain the age of twenty-five. He attained majority in October 1895. At the date of suit *D* was eighteen years old and *P* was twenty-five. It was contended that the widow was only a trustee of the rents for the benefit of her sons *P* and *D*. *Held* that under the will the widow took a life-interest in the rents subject to the obligation of maintaining, educating, and bringing up the children. The only two surviving children (*P* and *D*), having attained majority and having received property under the will of an uncle, were now no longer in need of being maintained by the widow. The obligation imposed upon her therefore by her husband's will was discharged, and she was now entitled to a life-interest free from all further obligation to maintain his children. NATHA KERRA *v.* DHUNBAIJI [I. L. R., 23 Bom., 1

105. ——— Trust—*Creation of trust—Uncertainty.*—A Hindu by his will, after appointing certain persons executors for the purpose of managing his estate after his death, gave them the following directions: "You should give my brothers, their wives and children, according to your wishes." *Held* that no trust was created by these words. KUMARASAMI *v.* SUBBARAYA . . I. L. R., 9 Mad., 325

WILL—*continued.*

9. CONSTRUCTION—*continued.*

106. — ——— — — *Validity of trust —Direction as to debt due from attesting witness —* [illegible] the children of such attesting witness —*Held* that there was no release of the debt or legacy to the attesting witness, but a valid trust in favour of the children. ADMINISTRATOR GENERAL *v.* LAZAR

[I. L. R., 4 Mad., 244

107. —— ——— — *Precatory trust —W R*, by his will made the following gift to his wife, *M A R*: "I give to my dearly beloved wife the whole of my property both real and personal [illegible] High Court that she took under her husband's will a life interest only in his property with a power of appointment in favour of the children, and that the shares belonged to *A C R*, and could not be sold in execution of the decree as part of the estate of *M A R* RAYNOR *v.* MUSSOORIE BANK

[I. L. R., 2 All., 55

Held by the Privy Council reversing the decision of the High Court, that the widow took an absolute interest in the property, and that no trust for the benefit of the children was created. In order to create a precatory trust, the words must be such that the Court finds them to be imperative on the first taker of the property; and the subject of the gift over must be well defined and certain. MUSSOORIE BANK *v.* RAYNOR

[I. L. R., 4 All., 500: L. R., 9 I. A., 70

108. Expression of wish—*Bequest.* [illegible] made her principal legatee: "I direct *S A*, under this will, to pay every month R614-7-4 (being one third of R1,933-5-4 my monthly pay allowed by the Government for notes, which are deposited) to my dependants and personal servants as detailed below. . . . . Be it known that the expenses of the imambarra, etc., will be continued for ever; and also the pay of *G K* and *M A* will be defrayed *for ever, i.e.*, generation after generation. The rest of the servants will be paid for life only." *Held* that these words constituted a bequest and were not merely the expression of a wish. Also that the bequest was not one of a gift payable out of a specified sum and no other; the statement that the monthly payments to be made amounted to one third of the sum received monthly by the testatrix not limiting the source of the legacies. SULEMAN KADR *v.* DORAB ALI KHAN

[I. L. R., 8 Calc., 1: L. R., 8 I. A., 117

109 ———— Will confirming trust-deed —*Construction of deed—Forfeiture.*—S, being desirous of securing and settling his property, executed a deed of trust whereby he conveyed and assigned all his real and personal property unto trustees, upon (among others) the following trusts: that immediately after his death the trustees should convey, assign, transfer, and make over all the premises mentioned in the deed unto such person or persons as S should, by his last will, attested by two witnesses, direct and appoint, and in default of such direction and appointment, unto the next heirs of S, their heirs and assigns, for ever, and in the meantime to pay the Government revenue out of the rents and profits of the real property, and employ the residue and accumulations as well as the produce and accumulations of the personal property "in such a manner as may procure the daily worship of the household idols" mentioned in the deed, and pay what they considered a fair and proper sum to the wives and family of S living at his death and residing in the family dwelling-house. By his will dated the same day as the deed, S declared that he ratified and confirmed the deed, subject to such provisions as were contained in his will, which were that the trustees should not charge the fund for the maintenance of those who should not live in the family dwelling-house and for the appointment of new trustees. *Held*, first, upon the authority of *Holmes v. Pigott 2 Ves. Jun.*, that the powers of the trustees (under the deed) did not cease on the death of S, and that the directions in the will although not strictly within the words amounted to a good appointment in equity, so that instead of the trustees of the deed conveying the property on the death of S to his son, they should continue to hold it subject to the trusts of the deed as modified by the will. Secondly, that the words "in such a manner as may procure the daily worship" etc., meant in such manner as *shall be sufficient to procure the daily worship etc.*, and that the trustees were not authorized to apply such portion of the trust funds as they in their discretion might think fit, but only such portion as was reasonably sufficient for those purposes. Thirdly, debts and liabilities are not charges upon property forfeited upon conviction of felony. HURRYDOSS BONNERJEE *v.* HOGG 1 Ind. Jur., O. S., 80

110 Gift of residue to a class—*—Postponement of period of distribution—Vested interests—Succession Act, ss. 98, 101, 102.*—A testator gave his residuary estate to trustees upon trust to invest and "to pay, transfer or divide the same unto, between, or among the children of my brothers *A* and *B* respectively, to be paid, transferred to, and divided among them in the proportions and at the times hereinafter mentioned, that is to say, the share of each and every son of my said two brothers shall be double that of each and every daughter, and the share of each son shall be paid to him or them respectively upon his or their attaining the age of 21 years, and the share of each daughter to be paid to

WILL—concluded.

9. CONSTRUCTION—concluded.

her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." The testator left him surviving his two brothers and a sister, C. A and B, both died before the eldest of the testator's nephews or nieces attained 21 or married. In a suit instituted by the widow and executrix of A to have it declared that the above bequests were void under ss. 101 and 102 of the Succession Act, and the testator died intestate as to the residue of his estate, and that she as executrix of A was entitled to receive a one-third share of the said estate and the accumulations thereof,—*Held* that the legatees took vested interests subject to be divested on death before the contingencies mentioned in the will happened; that the period of distribution alone was postponed; and that the bequests were valid. *Semble*—S. 98 of the Succession Act applies only to vested interests. MASEYK v. FERGUSSON

[I. L. R., 4 Calc., 304

111. ——— *Postponement of period of distribution—After-born child, Share of—Lapsed bequest—Succession Act, s. 98.*—A testator gave his residuary estate to trustees upon trust, to invest and "to pay, transfer, or divide the same unto, between, or among the children of my brothers A and B respectively, to be paid, transferred to, and divided among, them in the proportions and at the times hereinafter mentioned, that is to say, the share of each and every son of my said two brothers shall be double that of each and every daughter, and the shares of each son shall be paid to him or them respectively upon his or their attaining the age of 21 years, and the shares of each daughter to be paid to her or them on her or their respectively attaining that age or previously marrying, with benefit of survivorship between and among all the said sons and daughters." After the death of the testator, and before the period of distribution arrived, a son was born to B and one of the sons of A died intestate and unmarried. *Held* that the after-born son of B was entitled to a double portion as one of the male children of the testator's brother, and that the share of the son of A was divisible among the surviving male and female children in equal shares. MASEYK v. FERGUSSON . . . . . I. L. R., 4 Calc., 670

112. ——— Residuary estate of moveable and immoveable property—*Claims to, against executors and trustees.*—If a testator appoints persons to be his executors and trustees, and directs them to do certain acts which can only be done by the owners of his residuary estate, the trustees will take that estate, though there be no express device to them. TREEPOORASOONDERY DOSSEE v. DEBENDRONATH TAGORE I. L. R., 2 Calc., 45

WILLS ACT (XXV OF 1838).

——— s. 3—*Application of Act—East Indians domiciled out of the jurisdiction of High Court.*—The Wills Act XXV of 1838, applied to the wills of East Indians, whether domiciled within or

WILLS ACT (XXV OF 1838)—conc

beyond the testamentary jurisdiction of th Court. HOGG v. GREENWAY . . 2 B

Held, on appeal, the Wills Act only applie the High Court had an exclusive jurisdicti logous to that of the Ecclesiastical Court land. It did not apply in the case of a pers was not entitled by birth or domicile to have to him the actual law of England. Therefo not apply to the case of an East Indian (the illegitimate daughter of a Mahomedan who resided and died outside the limits of t nary civil jurisdiction of the Court. GR v. HOGG. HOGG v. GREENWAY

[Bourke, A. O. C., 111: (

WINDOWS OR DOORS.

——— Suit to close—

See CASES UNDER JURISDICTION O COURT—PRIVACY, INVASION OF.

See RIGHT OF SUIT—PRIVACY

[I. L. R., 18 Ma

See TRESPASS—GENERAL CASES.

[3 B. L. R., A.

WITHDRAWAL OF APPEAL.

See APPEAL—OBJECTIONS BY RESPO

[I. L. R., 17 A

See EXECUTION OF DECREE—APPL FOR EXECTION AND POWERS OF (

[I. L. R., 15 Bor

See PAUPER SUIT—APPEALS.

[I. L. R., 18 Bor

WITHDRAWAL OF APPLICA FOR EXECUTION.

See EXECUTION OF DECREE—APPL FOR EXECUTION AND POWERS OF

[I. L. R., 12 All., 17

I. L. R., 17 A

L. R., 22 I

I. L. R., 18 Calc., 462. 5

I. L. R., 15 Mac

See LIMITATION ACT, ART. 179— AID OF EXECUTION.

[I. L. R., 23 Cal

WITHDRAWAL OF CRIMINAL CEEDINGS.

See MAGISTRATE, JURISDICTION WITHDRAWAL OF CASES.

See POSSESSION, ORDER OF C COURT AS TO—TRANSFER OR DRAWAL OF PROCEEDINGS.

[I. L. R., 22 Cal

WITHDRAWAL OF SUIT

See APPELLATE COURT—EXERCISE OF POWERS IN VARIOUS CASES—PLAINT
[I. L. R., 9 All., 191
L. R., 13 I A., 134

See APPELLATE COURT—OBJECTIONS TAKEN FOR FIRST TIME ON APPEAL—SPECIAL CASES—WITHDRAWAL OF SUIT
[I. L. R., 3 All., 528

See COMPROMISE—REMEDY ON NON PERFORMANCE OF COMPROMISE
[Agra, F. B., 1

See DEKKAN AGRICULTURISTS' RELIEF ACT, s 53 . I. L. R., 12 Bom., 684

See DIVORCE ACT, s 35
[9 B L R., Ap , 6
I L R., 25 Calc , 222

See MULTIFARIOUSNESS
[I L. R , 16 All , 279

See PRACTICE—CIVIL CASES—AFFIDAVITS
[3 Bom., O. C., 55

See PRACTICE—CIVIL CASES—WITHDRAWAL OF SUITS OR APPEALS COL. 67
[I. L R., 7 Bom , 287

See RELINQUISHMENT OR OMISSION TO SUE FOR PORTION OF CLAIM
[I. L. R., 1 All , 321
I. L. R., 10 Mad , 180
I. L. R., 17 All., 53

See RES JUDICATA—RELIEF NOT GRANTED
[I. L. R., 21 Calc , 265

———— **Order allowing—**

See APPEAL—DECREES
[I. L. R., 8 All , 82
I. L. R., 18 Calc., 322
I. L. R., 15 All., 189
I. L R. 16 All., 19
I. L. R., 17 All., 97

See APPEAL—ORDERS
[I L. R., 6 All , 211

See SUPERINTENDENCE OF HIGH COURT—CIVIL PROCEDURE CODE s 622
[I L. R , 11 Mad , 322
I. L. R., 15 All., 109

———— **Power to allow—**

See SMALL CAUSE COURT, PRESIDENCY TOWNS—PRACTICE AND PROCEDURE—REFERENCE TO HIGH COURT
[I. L. R., 21 Calc., 120

It was formerly held in some cases that the power to allow withdrawal of suits given by the Civil Procedure Code (s 97 of Act VIII of 1859) was not applicable to suits under the Rent Act, 1859

DOYAL CHUNDER GHOSE v DWARKANATH MITTER
[Marsh , 149: W. R., F. B., 47
1 Ind. Jur., O. S., 41: 1 Hay, 347

MOTHOO SOOTUN MULLICK v PANCH COWREE MULLICK . . 7 W. R., 302

WITHDRAWAL OF SUIT—*continued*

BEER CHUNDER JOBRAJ v TARINEE CHURN ROY
[11 W. R., 46

RAMANATH DUTT v. JOYKISHEN MOOKERJEE
[11 W. R., 3

In other cases rent suits were held not to be excluded. RAM CHARAN BYSAK v HARVEY
[2 B. L. R., S N., 11. 10 W. R., 373

WOOMANATH ROY CHOWDHRY v SREENATH SING . . . 15 W. R., 200

Since the Bengal Rent Act, 1869, however, the procedure in rent suits has been, and is now, the same as in any other suits.

1. ———— **Sanction for fresh suit**—*Act VIII of 1859, s 97.* Civil Courts had no power to sanction the bringing of a fresh suit, except under s 97, Act VIII of 1859. ARJOON SINGH v HURREE HUR SINGH 14 W. R., 472

ANUND MOHUN PAUL CHOWDHRY v RAM KISHEN PAUL CHOWDHRY. GOBIND CHUNDER PAUL CHOWDHRY v RAMKISHEN PAUL CHOWDHRY
[2 W. R., 297

2. ———— **Leave to one of several co-plaintiffs to withdraw**—*Consent of co plaintiff—Civil Procedure Code, 1877, s 373.*—The provision in the third clause of s. 373 of the Code of Civil Procedure does not deprive the Court of power to permit one of several co-plaintiffs to withdraw unconditionally from a suit, even though his co-plaintiffs do not consent to his withdrawal. MOHAMAYA CHOWDHRAIN v DURGA CHURN SHAHA
[9 C L. R., 332

3. ———— **Withdrawal with consent of defendant**—*Civil Procedure Code, 1859, s 97—Right to bring fresh suit.* A plaintiff filed a plaint for an account to be taken. The plaintiff withdrew the plaint, without the permission of the Court to withdraw from the suit with liberty to bring a fresh suit. This was done for the purpose of a submission to arbitration under a deed mutually executed between the plaintiff and defendant. The deed was not acted upon. *Held*, reversing the decision of MACPHERSON, *J.*, that the plaintiff was not debarred by s. 97 of Act VIII of 1859 from bringing a fresh suit to establish the agreement for reference to arbitration and also for the account, which was a relief to which he was entitled. The section only applied to cases where the plaintiff withdraws from the suit without the consent of the defendant. JUGGOBUNDO CHATTERJEE v. WATSON & Co
[Bourke, A. O C., 182

S. C. in Court below Bourke, O C., 230

4. ———— **Withdrawal of claim under s. 230, Act VIII of 1859**—*Right to bring subsequent suit.*—In a suit to recover the possession of land of which the plaintiff had been dispossessed in execution of a decree against the first defendant, it appeared that the plaintiff had applied within one month from the date of his dispossession to the Court from which the process of execution had issued under s. 230 of the Code of Civil Procedure, setting up his title, and it was numbered and registered as a suit

WITHDRAWAL OF SUIT—*continued.*

had referred their differences to arbitration, and an award had been made in favour of the defendant and had been set aside, and an application for revision of the order setting it aside had been refused, on the ground that the matter could be made the subject of appeal from the final decree in the suit, permission to withdraw the suit and bring a fresh one should not have been granted. The minor defendant might be seriously prejudiced by such a course, and the suit had not abated against him by the death of *K*, while on the other hand a decree in the suit, if in his favour, would decide the litigation, and, if in favour of the plaintiff, would not prevent his bringing a suit for possession on the separate cause of action which had arisen. *Stahlschmidt* v. *Walford, L. R., 4 Q. B. D., 217,* referred to. The High Court refused to allow the plaint in the suit to be amended by the addition of a claim for possession of the property left by *H*. KALIAN SING *v*. LEKHRAJ SING

[I. L. R., 6 All., 211

23. ———— *Specific Relief Act (I of 1877), s. 21—Arbitration—Agreement to refer—Order under s. 506, Civil Procedure Code, to refer matters in dispute in action then pending—Order under s. 373, pending the reference, granting plaintiff permission to withdraw with liberty to bring fresh suit.*—The parties to a suit, while it was pending, agreed to refer the matters in difference between them to arbitration, and for this purpose applied to the Court for an order of reference under s. 506 of the Civil Procedure Code. The application was granted, arbitrators were appointed, and it was ordered that they should make their award within one week. Before the week had expired, and before any award had been made, one of the parties made an *ex-parte* application under s. 373 of the Code for leave to withdraw from the suit with liberty to bring a fresh suit in respect of the same subject-matter. The application was granted, the suit struck off, and a fresh suit instituted in pursuance of the permission thus given by the Court. In defence to this suit, it was pleaded that the suit was barred by s. 21 of the Specific Relief Act (I of 1877). *Held* that the Court in the former proceedings had no power to revoke the order of reference prior to award except as provided by s. 510 of the Code; that consequently the Court's order under s. 373 was *ultra vires* if involving such revocation, or, if not involving it, left the order of reference still in force, that in either alternative the suit was barred by s. 21 of the Specific Relief Act; and that it was immaterial that the period within which the award was to be made expired before the bringing of the second action. *Per* TYRRELL, *J.*, that the suit was barred by the second clause of s. 373, the Court having had no jurisdiction to pass the order under that section, or, having referred the suit to arbitration, to restore the suit to its file and treat it as awaiting the Court's decision. SHEOAMBER *v*. DEODAT . I. L. R., 9 All., 168

24. ———— Civil Procedure Code, s. 373 —*Withdrawal of suit with liberty to bring fresh suit.*—On the 5th September 1874 *R*, a Hindu, and his sons borrowed R5,000 from *V* and mortgaged to him certain land, items 1, 2, and 3. On the 7th September 1874. *V* borrowed R5,000 from *R N* and mortgaged his rights in items 1 and 2 and land of his own to *R N*. In 1877 *R N* bought at a sale in execution of a decree against *R* the share of *R* in the said items 1 and 2 subject to the mortgage created by *R* on 5th September 1874, and to another mortgage created by *R* on 11th January 1875. In 1880 *R N* sued *V* and the sons of *R* for arrears of interest due under his mortgage-bond. This suit was withdrawn with liberty to bring a fresh suit for the principal and interest due under the bond. In 1885 *R N* sued the sons of *R* and *V* to recover principal and interest due under his mortgage-bond. *Held* that the claim of *R N* was not barred. VENKATA *v*. RANGA

[I. L. R., 10 Mad., 160

25. ———— *Withdrawal of suit with permission to bring a fresh suit on the same cause of action—Civil Procedure Code, s. 43.*—Where a suit is withdrawn with permission under the first paragraph of s. 373 of the Code of Civil Procedure, the effect is to leave the parties in the same position as that in which they would have been if the suit had never been brought. A plaintiff, therefore, who has obtained an order under s. 373 of the Code, will not be debarred by s. 43 from claiming in a subsequent suit a relief which he might have included, but did not, in the suit which he was permitted to withdraw. *Venkata Chetti* v. *Ranga Nayak, I. L. R., 10 Mad., 160,* followed. BEHARI LAL PAL *v*. BABAN MAI DASI

[I. L. R., 17 All., 53

26. ———— *Dismissal of suit—Decree containing clause stating that a fresh suit might be instituted as to a part of the subject-matter—Res judicata.*—A suit for possession of immoveable property was wholly dismissed, on the ground that the plaintiff had not made out his title to the whole of the property claimed, though he had proved title to a one-third share of such property. The decree included an order in these terms: "This order will not prevent the plaintiff from instituting a suit for possession of the one-third interest of *M L* in the fields specified in the deed of sale," upon which the suit was based. No appeal was preferred from this decree. Subsequently the plaintiff brought another suit upon the same title to recover possession of the one-third share referred to in the order just quoted. *Held* by the Full Bench that the Court in the former suit had no power to include in its decree of dismissal any such reservation or order; that the fact that the decree was not appealed against did not give the order contained in it, which was an absolute nullity, any effect. *Kudrat* v. *Dinu, I. L. R., 9 All., 155; Ganesh Rai* v. *Kalka Prasad, I. L. R., 5 All., 595; Salig Ram Pathak* v. *Tirbhawan Pathak, Weekly Notes, All., 1885, 171;* and *Muhammad Salim* v. *Nabian Bibi, I. L. R., 8 All., 282,* explained. SUKH LAL *v*. BHIKHI

[I. L. R., 11 All., 187

27. ———— *Jurisdiction—Withdrawal of part of claim—Part of property in suit within and part without the jurisdiction of the Court.*—Suit for partition and possession of an undivided share of property sold to plaintiff by an

WITHDRAWAL OF SUIT—*continued.*

aged gosha lady of the class of Canarese Mahomedans called Navayats. The property sold was the vendor's share as heiress of her father, brother, and sister, [illegible]

against that part of the immoveable property in suit which was within the local limits of the jurisdiction of the Court, having compromised with the defendants, [illegible]

having been shown to be otherwise than *bona fide*) did not operate to take away the jurisdiction of the Court to adjudicate on the plaintiff's suit. KHATIJA *v.* ISMAIL　　I. L. R., 12 Mad., 380

28 ——————— *Summons not served on defendant—Suit for damages—Civil Procedure Code (Act XIV of 1882), ss. 97, 477, 491—Arrest of defendant before judgment under s. 477 of Civil Procedure Code (Act XIV of 1882)—Subsequent application by plaintiff under s. 373 of Civil Procedure Code for leave to withdraw suit—Right of defendant to appear at hearing, although summons not served upon him—Compensation for arrest—Rule of Court No. 64—Practice—Procedure.*—The plaintiff sued the defendant in Bombay for damages for breach of contract. The suit was filed on the 13th May 1890. The summons was not [illegible]

fresh suit on the same cause of action. The defendant [illegible]

summons had not been served on him, the defendant was not entitled to appear, and that no compensation could be awarded to him. *Held* (1) that, inasmuch as the plaintiff had by a legal process brought the defendant before the Court, the defendant had the right to appear at the hearing of the case, although no summons had been served upon him, and that he was entitled to object to the suit being dismissed under Rule of Court No. 64; (2) that under the circumstances the defendant was entitled to compensation for his arrest under s. 491 of the Code of Civil Procedure; (3) that the plaintiff might withdraw the suit under s. 373 of the Civil Procedure Code with liberty to bring a fresh suit on payment of the costs incurred by the defendant in the present suit. SYED ALI *v.* ADIS　　[I. L. R., 15 Bom., 160

29. ——————— *Institution of fresh suit.*—Where *A* instituted a suit to establish *A*'s right to sell certain property in satisfaction of a decree against *B*, but withdrew the suit without having obtained leave to bring a fresh suit, and subsequently instituted another suit to establish his right to sell the same property in satisfaction of another decree against *B*,—*Held* that the second suit was not barred by the provisions of s. 373 of the Code of Civil Procedure. KAMINI KANT ROY *v.* RAM NATH CHUCKERBUTTY

[I. L. R., 21 Calc., 265

30 ——————— *Withdrawal of suit without permission to bring fresh suit—Application of s. 373 of the Civil Procedure Code to suits in Revenue Courts—Act X of 1859.*—S. 373 of the Civil Procedure Code does not apply to suits before the Revenue authorities under Act X of 1859, that Act being a complete Code in itself. RADHA MADHUB SANTRA *v.* LUKHI NARAIN ROY CHOWDHRY　　.　　I. L. R., 21 Calc., 426

MOKUNDA BULLAVKAR *v.* BHOOBAN CHUNDER DAS　　I. L. R., 21 Calc., 514

31. ——————— *Suit withdrawn without liberty to bring a fresh suit—Subsequent suit for the same matter.*—In 1893 the plaintiffs sued to eject the defendants alleging they were in occupation of the land in question under a lease of 1892 from the late Zamorin of Calicut. The plaintiffs' title rested on an instrument executed by him in 1892. It was objected that the instrument was not [illegible]

[I. L. R., 21 Mad., 36

32 ——————— *Fresh cause of action—"Subject matter of suit," Meaning of.*—Where a plaintiff brought a suit for partition of joint property from which he withdrew with the consent of the defendants but without leave from Court to bring a fresh suit, and subsequently being dispossessed from the same joint property, brought this suit for the recovery of joint possession of the same,—*Held* that the mere fact of the suits being in respect of the same property would not be sufficient to make the latter suit one for the same subject matter as the former, when the state of facts leading to the two suits and the reliefs claimed under them are different, and s. 373, Civil Procedure Code, does not apply. *Kamini Kant Roy v. Ram Nath Chuckerbutty, I. L. R., 21 Calc., 265,* followed. *Quære:* Whether the mere fact that a plaintiff withdraws with the consent of the defendants but without leave of the Court, makes s. 373, Civil Procedure Code inapplicable. The observations of NORMAN, J., on this point in *Juggobundhu Chatterjee v. Watson & Co., Bourke A. O. C., 102* doubted. GOPAL CHANDRA BANERJEE *v.* PRASANNO CHANDRA BANERJEE　　.　　.　　.　　4 C. W. N., 110

See JUGGOBUNDHU CHATTERJEE *v.* WATSON & CO.

[Bourke, A. O. C., 102

WITHDRAWAL OF SUIT—*continued.*

33. ———— Costs—*Power to award costs—Withdrawal without leave.*—The High Court has no power, under the Civil Procedure Code, to award costs to the defendant when the plaintiff withdraws, not having asked leave to do so with liberty to bring another suit for the same matter. BRASS *v.* TIRUVENGADA PILLAI . . . 1 Mad., 247

34. ———— *Power to award Costs—Civil Procedure Code, 1859, s. 97.*—Where the plaintiff applied, under s. 97, Act VIII of 1859, to be allowed to withdraw from the suit, with liberty to bring a fresh suit for the same matter, the Court refused the application. Another application for leave, simply to withdraw from the suit, was granted, the Court dismissing the suit with costs. *Brass* v. *Tiruvengada Pillai, 1 Mad., 247,* dissented from. HOSSAINI BIBI *v.* PERI KHANUM

[1 B. L. R., O. C., 45

35. ———— *Form of order—Civil Procedure Code, 1859, s. 97.*—A plaintiff who is permitted to withdraw from his suit under s. 97, Act VIII of 1859, must pay the defendant's costs. On such withdrawal, the proper order to be recorded is not one of dismissal, but one simply permitting the plaintiff to withdraw the suit, with liberty to bring a fresh suit for the same matter on payment of costs or otherwise as the Court may direct. DOUCETT *v.* WISE . . 1 W. R., 322

36. ———— *Payment of costs not made condition precedent to fresh suit—Power to stay suit.*—*A*, having brought an action against *B*, was allowed to withdraw, with leave to bring a fresh suit, and was also ordered to pay the costs. *Held* that, the payment of the costs not having in terms been made a condition precedent to bringing a fresh suit, the Court had no power to stay proceedings in the fresh suit, on the ground that the costs had not been paid. CHITTO *v.* MUZZUR HOSSAIN

[2 Hyde, 212

37. ———— *Small Cause Court.*—A Small Cause Court is not bound to allow a plaintiff to withdraw a suit, on the ground that he has received payment from one of the defendants in the suit, that attempt to withdraw having been made after the plaintiff had succeeded in getting a judgment against two defendants which had been set aside by the Court on various grounds, and a new trial ordered. In such a case the Court may permit the withdrawal of the suit upon the terms of plaintiff paying the first defendant's costs. RAMA CHANDRA SHASTRY *v.* PAPU AIYAN . 3 Mad., 27

38. ———— Withdrawal of appeal—*Power of Appellate Court.*—An Appellate Court has authority to permit an appeal to be withdrawn. RAM PERSHAD OJHA *v.* BHUROSA KOONWAR

[9 W. R., 328

39. ———— *Permission of Court—Notice of withdrawal.*—An appellant has no right to withdraw an appeal, which has been regularly registered, without the permission of the Court. Where the appellant had given notice of the withdrawal of the appeal before the day of the hearing, and notice of withdrawal had been given to the respondent, but not until costs had been incurred,—*Held* that the appellant was not at liberty to withdraw the appeal, and the Court ordered that the appeal be set down for hearing. KAREEM BEE *v.* BEGAM BEE . . . . 3 Mad., 368

40. ———— Withdrawal of suit on appeal—*Act XXIII of 1861, s. 37—Power of Appellate Court.*—Under s. 37, Act XXIII of 1861, the High Court, upon appeal from a Judge sitting in the exercise of the ordinary original jurisdiction of the Court, had power, before pronouncing final judgment in appeal, to permit the plaintiff to withdraw from the suit with liberty to bring a fresh suit. GREGORY *v.* DOOLEY CHAND

[14 W. R., O. C., 17

41. ———— *Civil Procedure Code, 1859, s. 97—Exercise by Appellate Court of powers under s. 37, Act XXIII of 1861.*—Where application was made for leave to withdraw a suit, with leave to bring a fresh one, it being contended that the fact of a notarial protest on inland bills, and of their being in the hands of the holder without signature, was proof of dishonour; and further that, defendant being a Hindu, there was no necessity for notice of dishonour,—the Appellate Court, reversing the decision of the Court below, granted the application under the power given by s. 37, Act XXIII of 1861. BOMBAY CITY BANK *v.* MOONJEE HURRYDOSS . . . . Bourke, A. O. C., 99

42. ———— *Civil Procedure Code, 1859, s. 97.*—The plaintiff having sued, and the issues having been laid down as though the suit was for separate possession, the decree of the lower Court for joint possession was set aside, with leave to plaintiff, under Act VIII of 1859, s. 97, to bring a fresh suit for joint possession. JUGGUNNATH DEB NAZIR *v.* MOHEBOOLLAH . . 17 W. R., 164

43. ———— *Appellate Court, Powers of—Discretion, Exercise of—Civil Procedure Code, 1882, ss. 373, 582.*—Where, on appeal from a decree dismissing a suit, the Appellate Court, being of opinion that the plaint was informally drawn and its allegations regarding the cause of action not sufficiently specific, gave the plaintiff permission, under s. 373 of the Civil Procedure Code, to withdraw the suit with leave to institute a fresh one,—*Held per* STRAIGHT, *J.*, that with reference to the terms of s. 582 of the Civil Procedure Code, the Appellate Court had power to avail itself of the provisions of s. 373, and therefore had a discretion to make the order allowing the plaintiff to withdraw the suit and institute a fresh one. *Gregory* v. *Dooley Chand, 14 W. R., O. C, 17,* and *Khatoon Koonwar* v. *Hurdoot Narain Singh, 20 W. R, 163,* referred to. Also *per* STRAIGHT, *J.*, that it could not be said that the Appellate Court in this case had exercised its discretion so unreasonably or erroneously as to compel the interference of the High Court with it in appeal. *Per* TYRRELL, *J.*, that it might be taken that the Appellate Court, though not so stating in express terms, meant to set aside, and did set aside, the decree of the Court of first instance, regarding it as a decree which

WITHDRAWAL OF SUIT—*concluded.*

[illegible]

of the Civil Procedure Code (Act XIV of 1882)—that where a suit is withdrawn with leave to bring a fresh suit, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been brought—*does not apply to applications for execution.* *Pirjade* v. *Pirjade, I. L. R. 6 Bom., 681,* dissented from TARACHAND MEGRAJ *v.* KASHINATH TRIMBAK I. L. R., 10 Bom., 62

45. ——— *Civil Procedure Code, ss 373, 374, 647—Application for execution withdrawn by decree-holder—Act XV of 1877,*

[illegible]

applying for execution, but that, even assuming that permission to apply again could be inferred from the action of the Court in returning the application, s 374 was applicable so as to make a subsequent application presented five years after the decree *barred by limitation, with reference to art 179 of the* Limitation Act SARJU PRASAD *v.* SITA RAM

I. L. R., 10 All., 71

46. ——— Revocation of withdrawal—*Civil Procedure Code, 1859, s 97.*—A plaintiff who has withdrawn from his suit is at liberty to rescind the act of withdrawal at any time before final judgment. S. 97 of the Civil Procedure Code was held to be inapplicable to a case where the plaintiff [illegible]

HARDEE . . . . [illegible]

WITNESS—CIVIL CASES.

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6. EXAMINATION OF WITNESSES . .	9542
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See CASES UNDER COMMISSION—CIVIL CASES

See DIVORCE ACT, s 62

[3 B. L. R., Ap., 6

See CASES UNDER EVIDENCE—CIVIL CASES—MISCELLANEOUS DOCUMENTS—DEPOSITIONS

See CASES UNDER EVIDENCE ACT, 1872 s. 33

See SPECIAL OR SECOND APPEAL—OTHER ERRORS OF LAW OR PROCEDURE WITNESSES

See CASES UNDER WILL—ATTESTATION

——— Attestation by—

See STAMP ACT 1879 s 3 cl. 4.

I. L. R., 23 Calc., 767
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——— Competency of—

See LAND ACQUISITION ACT 1870, s 17

I. L. R., 17 Bom., 299

——— Damages by false statement of—

See CASES UNDER DEFAMATION.

See EVIDENCE ACT s 132.

I. L. R., 12 Bom., 440

See RIGHT OF SUIT—WITNESS.

I. L. R., 10 All., 425
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——— Deposition of—

See CASES UNDER EVIDENCE ACT, s 31

See LIMITATION ACT 1877, s 19—ACKNOWLEDGMENT OF DEBTS

I. L. R., 16 Mad., 220

——— Enforcing attendance of—

See PRACTICE—CIVIL CASES COMMISSION . I. L. R., 23 Calc., 404

——— Examination of—

See AMEEN 1 B. L. R., S. N., 1, 2
6 W. R., 63
11 W. R., 423
17 W. R., 292
19 W. R., 14

WITNESS—CIVIL CASES—*continued.*

See COMPANY—WINDING UP—COSTS AND CLAIM ON ASSETS.
[I. L. R., 14 Calc., 219

——— **Impeaching credit of—**

See EVIDENCE ACT, s. 155.
[I. L. R., 17 Calc., 344

——— **Legacy to—**

See WILL—CONSTRUCTION.
[I. L. R., 4 Mad., 244

——— **Non-attendance of—**

See CASES UNDER CIVIL PROCEDURE CODE, 1882, s. 177 (1859, s. 170).

——— **Omission to examine—**

See SPECIAL OR SECOND APPEAL—PROCEDURE IN SPECIAL APPEAL.
[I. L. R., 13 Bom., 336

——— **Order for examination of—**

See INSOLVENT ACT, s. 36.
[I. L. R., 11 Bom., 61
I. L. R., 22 Bom., 447

——— **Privilege of—**

See ARREST—CIVIL ARREST.
[14 B. L. R., Ap., 13
I. L. R., 1 Calc., 78
4 Mad., 145

See CASES UNDER DEFAMATION.

See EVIDENCE ACT, s. 132.
[I. L. R., 3 Mad., 271

See LIBEL . I. L. R., 14 Bom., 97

——— **Refusal of party to attend as—**

See SUPERINTENDENCE OF HIGH COURT—CHARTER ACT, s. 15—CIVIL CASES.
[B. L. R., Sup. Vol., 716

——— **Refusal to summon—**

See APPELLATE COURT—ERRORS AFFECTING OR NOT MERITS OF CASE.
[I. L. R., 16 All., 218

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

1. ——— **Arbitrator**—*Suit after award is set aside.*—If an arbitration award is set aside and the matter is tried as a suit before the Court, the arbitrator cannot be examined as a witness as to the grounds of his decision, but only to prove any admission which may have been made before him in the course of the arbitration and which might be material evidence. NILMONEE BOSE *v.* MOHIMA CHUNDER DUTT . . . . 17 W. R., 516

2. ——— **Attorney**—*Advocate—Competent witness.*—An attorney who has acted as advocate for one of the parties, and pleaded his case in Court, can be examined as a witness in the case. RAMPAL SHAW *v.* BISWANATH MANDAL
[5 B. L. R., Ap., 28

WITNESS—CIVIL CASES—*continued.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*concluded.*

3. ——— **Magistrate**—*Suit for malicious prosecution—Magistrate who held preliminary enquiry into criminal charge.*—Magistrates are not incapacitated to give evidence of matters which have come before them in the course of a preliminary enquiry into a criminal charge. *Held* that in a suit for a malicious prosecution the defendant had a right to the evidence of the Subordinate Magistrate, who held a preliminary enquiry into a charge of forgery preferred by the defendant against the plaintiff. RAMASAMI AYYAN *v.* RAMU MUPAN . 3 Mad., 372

4. ——— *Magistrate giving evidence before himself.*—Where a Judge is the sole Judge of law and fact in a case tried before himself, he cannot give evidence before himself or import matters into his judgment not stated on oath before the Court in the presence of the accused. QUEEN EMPRESS *v.* MANIKAM . . . I. L. R., 19 Mad., 263

5. ——— **Munsif**—*Witness as to facts judicially before him.*—A Munsif ought not to be called on to depose as to what took place before him in the course of a trial which he was conducting as Munsif, and he is entitled to exemption. ANONYMOUS . . . . . . 6 Mad., Ap., 42

6. ——— **Person against whom affiliation order is sought**—*Criminal Procedure Code, 1882, s. 488—Evidence Act (I of 1872), s. 120—Bastardy proceedings—Maintenance, Order of Criminal Court as to.*—Bastardy proceedings under the provisions of s. 488 of the Criminal Procedure Code are in the nature of civil proceedings within the meaning of s. 120 of the Evidence Act, and the person sought to be charged is a competent witness on his own behalf. NUR MAHOMED *v.* BISMULLA JAN . . I. L. R., 16 Calc., 781

HIRA LAL *v.* SAHEB JAN I. L. R., 18 All., 107

7. ——— **Mamlatdar as assessor under Land Acquisition proceedings.**—On a reference to the Collector under the Land Acquisition Act, the Mamlatdar acted as an assessor appointed by the Collector, and was also examined as a witness as to the value of the land. But no objection was taken to his acting as an assessor. The District Judge eventually upheld the Collector's award. On an application under s. 622 of the Civil Procedure Code (Act XIV of 1882),—*Held* that a person who is appointed an assessor under s. 19 of the Land Acquisition Act (X of 1870) performs quasi-judicial functions, and is therefore incompetent to testify as a witness in the same proceedings. SWAMIRAO *v.* COLLECTOR OF DHARWAR
[I. L. R., 17 Bom., 299

8. ——— **Wife**—*Evidence of wife to prove non-access—Husband and wife—Presumption of legitimacy—Illegitimacy—Presumption of non-access—Evidence Act (I of 1872), ss. 112 and 118.*—A wife can be examined as to non-access of her husband during her married life, without independent evidence being first offered to prove the illegitimacy of her children. ROZARIO *v.* INGLES
[I. L. R., 18 Bom., 468

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES.

9. ———— Duty of Court—*Securing attendance of witnesses*—Every Court is bound to render all reasonable assistance to a party to enforce the attendance of his witnesses. NILMONEE BANERJEE v SHUBBO MONGOLA DEBEE . 6 W. R., 14

10. ———— *Civil Procedure Code, 1882, s 159* Under s 159 of the Civil Procedure Code (Act XIV of 1882), a party to a suit is entitled, as of right, to obtain summonses for his witnesses any time before the day fixed for the disposal of the suit BAI KALI v ALARAKH PIRBHAI . . . I L R., 15 Bom., 86

11. ———— *Application for summons to cite witnesses*—A party is entitled at any stage of the case before hearing to apply for a summons to cite witnesses without reference to the number of such applications which he may have previously made, and it is the duty of the Court to comply with such application, if any time be left before the hearing of the cause ANURUP CHANDRA MUKHOPADHYA v HIRAMANI DASI [3 B. L. R., Ap., 38

S C, ONOOROOP CHUNDER MOOKERJEE v HEERA MONEE DOSSEE . 11 W. R., 418

HARI DAS BAISAKH v MOAZAM HOSSEIN [8 B. L. R., Ap, 16: 15 W. R., 447

12. ———— Power to summon witnesses—*Settlement of issues*—Act VIII of 1859 conferred no authority upon a Judge to issue summonses to witnesses to attend on the settlement of issues The written statements must be prepared with great care and deliberation, so as to dispense altogether with parol evidence at the settlement of issues ANUND CHUNDER BANERJEE v WOOMESH CHUNDER ROY [1 Ind. Jur, O. S, 15: 1 Hyde, 147

The subsequent Codes, however, expressly provide for the attendance of witnesses at a settlement of issues: *see* s. 159, Civil Procedure Code, 1882.

13. ———— Discretion of Court to summon witnesses—A Judge's discretion in not compelling the attendance of witnesses named by one of the parties must be exercised on reasonable grounds distinctly stated in the judgment. OZEER MAHOMED v BYDNATH DOSS CHOWDHRY [5 W. R., Act X, 6

HARA CHAND PORAMANICK v KRISHTO MONEE GIREE . . . . . 1 W. R., 298

MATENGUNEE DABEA v KALEE DABEA [2 W. R., 4

See NEEM CHUND DEY v ANUND COOMAR ROY CHOWDHRY . . . . 7 W. R., 147

14 ———— *Selection of witnesses by Court*—It is not right for the lower Court to select five out of twenty witnesses tendered for examination. It is the bounden duty of the Judge to receive all the evidence tendered, unless the object of summoning a large number of witnesses clearly appears to be to impede the adjudication of the case, or otherwise to obstruct the ends of justice. RAMDHAN MANDAL v RAJBALLAB PARAMANIK [6 B. L. R., Ap., 10

15. — *Power to refuse to summon witness*—A Court has no power to refuse to summon witnesses when expressly requested by a party to do so unless the witnesses are required to be summoned in such a manner, or in such numbers as clearly indicates a vexatious desire of obstructing the course of justice. RAM PHUL PANDEY v WAHED ALI KHAN . 14 W. R., 66

16. ———— *Refusal to summon witnesses*— [illegible]

17. Preliminaries to summoning witness *Materiality of evidence*—Before the Court makes an order compelling the attendance of a party to the suit, it must be satisfied that his evidence will be material. GOPAL CHUNDER HAZRAH v. MOHESH CHUNDER BANERJEE 21 W. R., 41

18 Summoning plaintiff as witness—*Reasons for summons—Duty of Court—Materiality of evidence*—A Court is bound before summoning a plaintiff to give evidence, to record the reasons of its being satisfied that the evidence of the plaintiff is essential to the defendant's case Where, however, the Court does not give reasons for being satisfied that the presence of the plaintiff is necessary, it does not follow that the defendants had failed to satisfy the Court that there was sufficient ground for the application MAKOOND ADIT v SUTTEN GUN ADIT 17 W. R., 507

19 — Application to summon witnesses—*Witnesses declared unnecessary by Court*—Where on a case coming on for hearing before a Court to which it had been remanded, the Judge observed that the evidence of witnesses would be unnecessary, the declaration was held to have sufficiently justified the plaintiffs in making no further application for a summons on their witnesses. LAM JEWUN SINGH v RADHA PERSHAD SINGH [16 W. R., 100

20. ———— *Undertaking to bring witnesses—Practice*—On the 12th October [illegible]

[illegible] stances, a reason for not waiting for them, if the

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*continued.*

plaintiff's case had been in other respects finished before they could be examined. PANDURANG ANPAI *v.* KESHAVJI JADHAVJI . I. L. R., 6 Bom., 742

21. ——— Time for summoning witnesses — *Duty of Court.*—The Civil Procedure Code neither expressly nor impliedly declares that witnesses must be summoned before the day fixed for the first hearing of the suit. So long as the hearing merely stands adjourned, and so long as the party who wishes to summon witnesses has not closed his case, the Court is bound to summon them, unless it appears that the application is made so late that the witnesses cannot be reasonably expected to attend in time to be examined before that party's case closes. INDRO CHUNDER BABOO *v.* DUNLOP 9 W. R., 530

22. ——— Ground for refusal to summon witnesses—*Obligation of Court to assist party—Delay in giving names of intended witnesses.*—Where an appellant delayed to give in the names of his witnesses, but would yet have been within reasonable time to secure their attendance on the day of hearing if summonses had been sent through different peons by the railway,—*Held* that the lower Appellate Court was bound to have directed the issue of the summonses, and to have given every assistance to the party asking for them, all additional expenses being paid by such party. PEAREE MOHUN MOOKERJEE *v.* MADHUB CHUNDER GHOSAL . . 9 W. R., 489

23. ——— *Omission of proper steps to obtain attendance of witnesses.*—Where some of the witnesses (defendants) in a suit had been examined, and plaintiff petitioned the Court to have the remaining defendants examined as witnesses, he was held not to have taken the necessary steps required by law to enforce their attendance, because he did not make any special application to the Court, or show sufficient grounds in support of his petition. RAM TUHUL THAKOOR *v.* OODIT NARAIN SINGH . . . . 12 W. R., 36

24. ——— *Procedure under Dekkan Agriculturists' Act (XVII of 1879), s. 7—Right of defendant to call witnesses.*—The plaintiff sued, under s. 3, cl. (*w*), of Act XVII of 1879, for money due on a bond dated the 8th September 1877. The defendant, though duly summoned, did not appear on the day fixed in the summons, which was for the final disposal of the suit The Court therefore proceeded with it *ex-parte.* The defendant, being subsequently summoned and examined as a witness under s. 7 of the Act, admitted the bond sued upon, but pleaded part payment of the plaintiff's claim. He then applied to the Court that his witnesses should be summoned, and that their evidence be taken in support of his allegation. The Subordinate Judge was of opinion that he (defendant) was not entitled to offer the evidence. On his referring the case to the High Court,—*Held* that it was his duty to summon the witnesses named by the defendant. DULICHAND *v.* DHONDI [I. L. R., 5 Bom., 184

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*continued.*

25. ——— *Civil Procedure Code, 1877, s. 137—Summons to produce documents.*—In all cases in which parties apply for a summons to compel the attendance of witnesses, or a summons to produce documents, or apply to have a document sent for under s. 137 of the Code of Civil Procedure, the Court ought not to refuse such application, merely because in its opinion the witnesses cannot be present, or the documents cannot be produced, before the termination of the trial. KRISHNA CHURN BAISACK *v.* PROTAB CHUNDER SURMA [I. L. R., 7 Calc., 560

26. ——— Adjournment for attendance of witnesses — *Civil Procedure Code (Act XIV of 1882), s. 156—Discretion, Exercise of—Witnesses, Attendance of—Power of High Court on second appeal.*—On the day fixed for the hearing of a suit, the defendant applied for process against certain of his witnesses who had been summoned, but who had failed to attend, asking for an adjournment to obtain their attendance. This application was refused and the case was proceeded with. The plaintiffs' evidence was recorded and that of one of the defendants; the defendants being unable to produce further evidence, the Court recorded that the case was closed, and that judgment would be delivered on the following day, the 31st December. On the day following the defendants produced certain witnesses and asked that they might be examined. This application was rejected, and judgment was subsequently delivered in favour of the plaintiffs. *Held per* PETHERAM, *C.J.*—That the omission to examine the defendants' witnesses on the 31st December was a substantial error in procedure, and that the Munsif had therefore exercised his discretion wrongfully. *Per* GHOSE, *J.*—That although there was some doubt whether the Court on second appeal could interfere in a point of discretion, yet this doubt was not strong enough to justify an expression of opinion contrary to that arrived at by the Chief Justice. MONI LAL BANDOPADHYA *v.* KHIRODA DASI [I. L. R., 20 Calc., 740

See TAYLOR *v.* SARAT CHUNDER ROY CHOWDHRY [I. L. R., 20 Calc., 745 note

27. ——— *Civil Procedure Code (1882), s. 159—Application to summon witnesses—Duty of Court in respect of such application.*—Where a person making an application to a Civil Court for witnesses to be summoned has negligently or with intention to delay the hearing postponed the making of his application for a summons until a time when it would be impossible to obtain the attendance of the witnesses at the hearing, the Court might properly refuse to adjourn the hearing, but nevertheless it would be the duty of the Court, to order the summons asked for to issue, as the Court is not given a discretion under s. 159 of the Code of Civil Procedure enabling it to refuse such an application. *Krishna Churn Baisack* v. *Protab Chunder Surma, I. L. R., 7 Calc., 560,* and *Bai Kali* v. *Alarakh Pirbhai, I. L. R., 15 Bom., 86,* approved. BHAGWAT DAS *v.* DEBI DIN I. L. R., 16 All., 218

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*continued.*

28. ——— **Ground for adjournment of suit**—*Delay in making application to summon witnesses—Discretion of Court.*—If a party applies for summons to witnesses so late that he cannot bring the witnesses on the day of hearing, it still remains in the discretion of the Court to decide whether or no the case should be adjourned. A Munsif is bound under the Procedure Code to issue summonses to witnesses when asked for. ABDOOL KADIR *v.* AFIK MISDHA . . 24 W. R., 280

29. ——— *Civil Procedure Code, 1882, ss. 159 and 167—Summoning witnesses—Delay in serving summonses.*—Under s. 159 of the Code of Civil Procedure (Act XIV of 1882) parties are entitled to summonses for their witnesses at any time before the final hearing but if there has been delay and want of diligence in consequence of which witnesses, not having been served in good time, are not present, the Court may properly refuse to adjourn the hearing. KAJI AHMED *v.* KAJI MAHAMAD

[I. L. R., 9 Bom., 308

30. ——— **Power to dismiss suit**—*Dismissal of suit on ground of there not being time after filing of list to summon witnesses—Civil Procedure Code, 1859, s. 149; 1877, s. 159.*—The 20th of March 1877 having been fixed for the final hearing of a suit, the plaintiff on the 17th of March, and the defendant on the 19th filed their list of witnesses to be summoned. Both lists were ordered merely to be put up with the record. When the suits came on for hearing, it was dismissed on the ground that when the plaintiff filed his list, there was not sufficient time left to summon the witnesses. *Held* that the Judge was not justified in dismissing the suit on this ground unless he found that it would have been absolutely impossible to secure the attendance of the witnesses had the summonses been granted on the 17th instant. S. 149 of Act VIII of 1859, and s. 159 of Act X of 1877, discussed. RAJENDRO NARAIN NYOGI *v.* KUMUD NARAIN BHUP . . 3 C. L. R., 560

31. ——— **Issue of fresh subpœnas to witnesses**—*Re-hearing of ex-parte case under s. 119, Civil Procedure Code, 1859—Quære.*—Where either under s. 119, Code of Civil Procedure, or in the exercise of a power of review a suit is restored to its original position, is the plaintiff bound to obtain and issue fresh subpœnas? BISHEN PERKASH SINGH *v.* RUTTUN GEER CHELA 20 W. R., 3

32. ——— **Service of subpœnas**—*Liability for non-service.*—After a list of witnesses has been filed and the tulubana paid, the Court's officers, not the applicant, are responsible for the service and return of notice. MUSSAMUT KHANUM *v.* HOOKOOM BIBEE . . 15 W. R., 69

33. ——— **Form of summons**—*Omission to state place of attendance.*—A summons should state the place of attendance. ANONYMOUS

[7 Mad., Ap., 14

ANONYMOUS . . . 7 Mad., Ap., 43

See s. 163, Civil Procedure Code, 1882.

WITNESS—CIVIL CASES—*continued.*

2. SUMMONING AND ATTENDANCE OF WITNESSES—*concluded.*

34. ——— **Summoning public officer as a witness.**—In fixing the time for the attendance of a public officer as a witness or in granting an adjournment for that purpose, the fullest consideration must be given to the exigencies of the public duties of the officer summoned. ANONYMOUS

[6 Mad., Ap., 6

35. ——— **Issue of warrant on non-attendance of witness**—*Warrant of arrest for witnesses not attending—Verbal order to attend.*—A verbal order of the Court to witnesses requiring them to attend on a future day would not justify the issuing of a warrant for the apprehension of such witnesses in case they failed to attend in obedience to such verbal order. VENKATAPPAH *v.* PAPAMMAH . 5 Mad., 133

ANONYMOUS . 6 Mad., Ap., 10

See, however, ANONYMOUS 6 Mad., Ap., 15

3. EXPENSES OF WITNESSES.

36. ——— **Right to be paid expenses**—*Omission to apply for expenses before giving evidence.*—A witness is entitled to be paid his expenses by the party at whose instance he has been summoned, although he has not applied for them before giving his evidence. LONDON, BOMBAY, AND MEDITERRANEAN BANK *v.* MAHOMED IBRAHIM PARKAR I. L. R., 4 Bom., 619

37. ——— *Suitable expenses—Persons of rank and wealth.*—People of rank and wealth, when summoned as witnesses to a distance from their place of residence, are entitled to travelling and other expenses suitable to their circumstances. CHUNDER SEKHUR DEB *v.* JAIDEB CHUNDER SETT

[10 W. R., 76

38. ——— **Payment of expenses into Court**—*Civil Procedure Code, 1859, s. 151.*—Under s. 151, Act VIII of 1859, extended to Revenue Courts by s. 67, Act X of 1859, the defendant was not bound to pay into Court the costs of summoning and defraying the expenses of the witnesses until the Court had fixed what was reasonable. MOHUN MUNDUR *v.* BRIJ INDURJEET SINGH 9 W. R., 129

39. ——— **Power to order evidence to be taken**—*Omission to tender expenses—Tender of tender of expenses.*—Where there was no proof that a defaulting witness's expenses were tendered to him by the party at whose instance he was summoned, the Court on appeal declined to order that witness's evidence to be taken or to take it itself. ISHAN CHUNDER DEY *v.* ORAYN NATH DEB. COWRIE *v.* ISHAN CHUNDER DEY 18 W. R., 10

40. ——— **Amount of expenses**—*Compensation for loss of time.*—Act VIII of 1859 made no provision for compensation to witnesses for loss of time. NAWAB NAZIM OF BENGAL *v.* PERTABNARAIN DEB . 2 Hyde, 230

WITNESS—CIVIL CASES—*continued.*

3. EXPENSES OF WITNESSES—*concluded.*

41. ———— Provision for expenses—*Suit for expenses—Cause of action.*—No action for the expenses of a witness will lie. Explanation of the manner of providing for the payment of such expenses. DE SARAN *v.* HURRISH CHUNDER BISWAS [5 W. R., S. C. C. Ref., 6

4. DEFAULTING WITNESSES.

42. ———— Non-attendance of witnesses on summons—*Duty of parties—Commission.*—When witnesses do not appear after service of summons, it is the duty of the party requiring their evidence, and not of the Court, to move for further measures to be taken to secure their attendance; and when a commission is issued for the examination of witnesses, the Court must be moved to wait for the return. NUND MOHUN CHOWDHRY *v.* GOLUCK NATH NEOGEE . . . . 11 W. R., 99

43. ———— *Duty of parties—Issue of attachment—Civil Procedure Code, 1859, s. 168.*—Where witnesses do not appear on summons, it is for the parties to move the Court, not for the Court to proceed, *suo motu*, to further the production of the witnesses, though the Court may issue attachment under s. 168, Code of Civil Procedure, if it is shown that the witnesses are absconding or keeping out of the way. BACHMAN *v.* LALL BEHAREE PANDEY . . . 13 W. R., 324

44. ———— *Civil Procedure Code (1882), s. 174—Non-attendance of witness in obedience to a summons—Warrant of arrest—Non-payment of expenses in accordance with s. 160, Civil Procedure Code.*—There is no obligation on a Civil Court to issue a warrant for the arrest of a witness who, having been summoned, has failed to attend, when it is shown to the Court that the absence of such witness is due to the non-payment or non-tender, by the person at whose instance the summons had been issued, of the necessary expenses of such witness as specified in s. 160 of the Code of Civil Procedure. TODAR MAL *v.* SAID MUHAMMAD [I. L. R., 17 All., 277

45. ———— Order for arrest of witness—*Civil Procedure Code, 1859, s. 168—Proceedings against witnesses absent who have been summoned.*—Where a lower Appellate Court, by the terms of its order on a petition for the apprehension of witnesses, under s. 168, Code of Civil Procedure, undertook to see that proper orders should be passed, it was bound to pass such orders as might, in its judicial discretion, be necessary under that section. MOHADEB SHAHA *v.* SHEO SUHOY GEER [9 W. R., 359

46. ———— *Witness making default in appearing—Civil Procedure Code, 1859 s. 168—Ground for issue of warrant.*—S. 168 of the Civil Procedure Code required that there should appear to the Court to be satisfactory ground for believing that the default on the part of witnesses summoned to give evidence was without lawful excuse before issuing a warrant for the arrest of such witnesses. But it was not necessary for this purpose to institute a formal investigation and come to a determination on the evidence adduced. PERIYANNA CHETTY *v.* GOVINDA GOUNDEN . 5 Mad., 104

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*continued.*

47. ———— Issue of proclamation against absent witness—*Materiality of evidence—Ground for non-attendance.*—A Court was held to be not bound to issue a proclamation against absent witnesses in a case where it was not satisfied that the witnesses were material, or that they had really absconded to avoid attendance. BHOOBUN MOYEE DOSSEE *v.* KISHOREE DOSSEE [6 W. R., 235

48. ———— Application for process against absconding witness—*Ground for not granting application—Civil Procedure Code, 1859, ss. 159, 168.*—On application being made under ss. 159 and 168 of Act VIII of 1859 for issue of process against an absconding witness, the Court, if satisfied (as it was bound to be) that the witness had absconded and that he was a material witness, ought to grant the application unless the applicant had placed himself in such a position by his conduct that it would be inequitable to grant it. RAJOO SINGH *v.* LALLA BALGOBIND LAL . . 1 W. R., 26

49. ———— Notice of proclamation—*Civil Procedure Code, 1859, ss. 159 and 168—Service of proclamation.*—The proclamation issuable under s. 159, Act VIII of 1859, could not be legally affixed to the mâl cutchery of a defaulting witness. Before the provisions of that section can come into play, personal service of summons must be attempted. In the absence of process of legal service, the Magistrate's order of imprisonment for contempt, under s. 174 of the Penal Code and s. 168 of the Code of Criminal Procedure, was quashed. QUEEN *v.* HURYNATH CHOWDHRY . 7 W. R., Cr., 58

50. ———— Discretion of Court as to issue of proclamation—*Proclamation against absent witness—Civil Procedure Code, 1859, s. 159.*—S. 159, Code of Civil Procedure, gives a Civil Court a discretion as to the issue of proclamation and subsequent orders for attachment; but such Court is bound to exercise a reasonable discretion. PORAN CHUNDER GHOSE *v.* GOPEE NATH SINGH [8 W. R., 505

51. ———— *Ground for issue of proclamation—Civil Procedure Code, 1859, s. 159.*—A Court was not authorized to issue the proclamation and attachment mentioned in s. 159, Code of Civil Procedure, unless it was proved to its satisfaction that the evidence of the witness was material, and that he was avoiding the summons; and after these circumstances have been shown, it was a matter of discretion to issue the proclamation and attachment, and after issue to let the case stand over. KALEE DASS CHUCKERBUTTY *v.* ESHAN CHUNDER CHATTERJEE . . . . 13 W. R., 416

52. ———— Production of document—*Civil Procedure Code, 1882, s. 174—Court's juris-*

WITNESS—CIVIL CASES—*continued.*

4. DEFAULTING WITNESSES—*continued.*

diction to punish a witness for refusing to produce a document—Procedure—Penal Code (Act XLV of 1860), s. 175—Criminal Procedure Code (Act X of 1882), s. 480.—A witness was summoned to produce a document [illegible] the Court fined him R75 under s. 174 of the Code of Civil Procedure. *Held* that the fine was illegally levied. The jurisdiction of the Court to punish under s. 174 of the Civil Procedure Code exists only in the case of a witness who, not having attended on summons, has been arrested and brought before the Court. The case of a witness who having a document will not produce it is provided for by s. 175 of the Penal Code and s. 480 of the Code of Criminal Procedure. IN RE PREMCHAND DOWLATRAM . . I. L. R., 12 Bom., 63

53. ——— Service of subpœna—*Civil Procedure Code (Act XIV of 1882), ss. 80, 174—Failure to attend—Fine.*—S. 174 of the Code of Civil Procedure is a section of a highly penal nature, and its provisions in order to give validity to anything purporting to be done under them, must be strictly complied with. Where the return of the peon of the service of a summons upon a witness was in these terms: "The remaining witness N. I. being in Calcutta the copy of summons in his name has been hung upon the main wall of the cutchery house of the defendant's residence." *Held* that the circumstance that the peon could not find the witness when he says he knew where the witness was is not sufficient *per se* to warrant the peon in affixing a copy of the summons to the house of the witness, so as to constitute good substituted service under s. 80, Civil Procedure Code. That under s. 174, Civil Procedure Code, a witness who has failed to appear on his summons can only be fined after he has been arrested and brought before the Court. Where a witness was served as above and he applied for a time to appear,—*Held* that the fact of his applying for time would not preclude him from saying that there had been no such service of the summons as could warrant s. 174, Civil Procedure Code, being put into force against him. KALI NARAIN ROY CHOWDHURI *v.* BAJOO . . 3 C. W. N., 307

54. ——— Ground for postponement of case—*Application for process against absent witness made at late stage of case—Civil Procedure Code, 1859, s. 159.*—Where an application was made at a very late stage of a case to enforce the provisions of s. 159 of the Code of Civil Procedure without proffer of any proof that the witness was absconding or keeping out of the way for the purpose of avoiding the service of the summons, the lower Appellate Court was held to have been justified in not postponing the case to secure the attendance of the witness, although material. ASOOKNYA *v.* MISSER . . 15 W. R., 178

55. ——— Fine for avoiding service of summons—*Act XIX of 1853, s. 28—Act X of 1861.*—S. 28 of Act XIX of 1853 having been repealed by Act X of 1861, a Judge had no jurisdiction, under Act VIII of 1859, to inflict a fine for the purpose of punishing a witness who absconded, or kept out of the way, to avoid service of summons. IN RE GAJADHAR PERSAD NARAIN SINGH . . [1 B. L. R., A. C., 183

GUJADHUR PERSHAD NARAIN SINGH *v.* JUGDEO NARAIN . . 10 W. R., 233

5. SWEARING OR AFFIRMATION OF WITNESSES.

56. ——— Objection to take oath—*Member of Church of England—Stat. 17 and 18 Vict., c. 125.*—A member of the Church of England is not exempt by law from taking an oath in a Court of justice in India, although he may entertain sincere objections against taking an oath on the Bible, and is willing to make an affirmation binding upon his conscience. The English Stat. 17 & 18 Vict., c. 125, does not apply to India. VARU MUNASAMI *v.* SOWERBY . . 2 Mad., 213

57. ——— Where a Mahomedan witness stated that he had no objection to oaths in general, but that he was suffering from a disease which disqualified him from taking an oath on the Koran until purification,—*Held* that the witness must be sworn in the regular way or not at all. ANONYMOUS . . 1 Mad., 93 note

58. ——— Refusal to examine witnesses—*Dismissal of suit by first Court without examining defendant's witnesses—Reversal of decree on appeal—Duty of Appellate Court to direct examination of witnesses before reversing decree.*—Where a Court of first instance considering it unnecessary to examine certain witnesses for the defence dismissed the suit, and the lower Appellate Court, disbelieving the evidence of those witnesses for the defence who were examined, allowed the plaintiff's appeal,—*Held* that, before doing so, the lower Appellate Court should have afforded the defendants an opportunity of supplementing the evidence which they had given in the first Court by the testimony of those witnesses whom that Court had declared it unnecessary to hear, and that the case must be regarded as one in which the first Court had refused to examine the witnesses tendered by the defendants. The Court directed the first Court to examine the defendants' witnesses, and, having done so, to return their depositions to the lower Appellate Court, which was to rehear the appeal upon the record and dispose of it. KHUDA BAKHSH *v.* IMAM ALI SHAH [I. L. R., 9 All., 339

6. EXAMINATION OF WITNESSES.

(a) GENERALLY.

59. ——— Selection of witnesses—*Duty of parties.*—It is not the business of a Court to determine what witnesses shall be examined. The parties must select their own witnesses, and call upon [illegible]

WITNESS—CIVIL CASES—*continued.*

6. EXAMINATION OF WITNESSES—*continued.*

the Court to examine such of them as they may offer for examination, and it is their own fault if they do not take the necessary steps to have the witnesses examined, or to compel them to be present for examination at the proper time. MOHNO MOYEE DEBEE *v.* BHEEM KOOMAR CHOWDHRY . 6 W. R., 231

DEEN DYAL SINGH *v.* DANEE ROY [13 W. R., 185

60. ———— Right to have witnesses examined—*Ground for refusing to hear witness—Opinion of Court as to materiality of evidence.*—Every party to a suit is entitled to have all the witnesses whom he desires to call, and is ready at the trial to produce, heard by the Court, whatever opinion the Court may form by anticipation as to the probable value of the evidence when it shall be given. LOOLOO SINGH *v.* RAJENDUR LAHA [8 W. R., 364

PORAN CHUNDER GHOSE *v.* GOPEENATH SINGH [8 W. R., 505

CHOWDHRY KHOGRGO ROY *v.* SHIB TOHUL ROY [17 W. R., 172

61. ———— *Ground of special appeal—Omission of Court to examine witness.*—As a general rule, all the witnesses brought forward by a party ought to be examined. But when an objection is made in special appeal that the Judge below has omitted to examine certain witnesses, it ought to be shown that the evidence of those witnesses would have been material to the case. NILKANTH SURMAH *v.* SOOSELA DEBIA . . 6 W. R., 324

62. ———— Want of opportunity to adduce evidence, Proof of—*Tender and rejection of witness.*—In order to establish such a plea as that he was not allowed an opportunity to adduce evidence, a party must show that he tendered witnesses or other evidence, and that his tender was rejected on the ground alleged. BUKSH ALI SOWDAGUR *v.* JOYANUT KHAN . . . . . . 11 W. R., 248

CHUNDER NATH SEIN *v.* ANUNDMOYEE DOSSEE [11 W. R., 289

QUEEN *v.* TOTARAM . 11 W. R., Cr., 15

63. ———— Refusal to examine witness—*Ground for refusal—Omission from list of witnesses.*—The fact of a witness not having been named in the plaintiff's list of witnesses is no ground for refusing to examine him when produced at the proper time. RAKHAL DOSS MUNDUL *v.* PROTAP CHUNDER HAZRAH . . . . 12 W. R., 455

64. ———— *Refusal of verbal request of vakil—Ground of special appeal.*—Where a lower Appellate Court's refusal to examine witnesses in a suit for damages for assault is made a ground of special appeal, it is not sufficient to put in an affidavit to the effect that a verbal request of the vakil to examine the witnesses was refused by the Judge. RAMESSUR BHUTTACHARJEE *v.* SHIB NARAIN CHUCKERBUTTY . 14 W. R., 419

WITNESS—CIVIL CASES—*continued.*

6. EXAMINATION OF WITNESSES—*continued.*

65. ———— *Additional witnesses to facts already in evidence—Tender of large number of witnesses—Ground for remand.*—In a suit for possession of zamindari and other estates claimed by the plaintiff as son and heir of the deceased zamindar, the defendants denied the title of the plaintiff, alleging that he was a spurious and supposititious child and tendered fifty-eight witnesses to prove that fact. The Zillah Court, having taken the depositions of thirty of these witnesses, refused to permit the remaining twenty-eight to be examined, on the ground that, as they were going to prove the facts deposed to by those already examined, it was unnecessary to take their depositions, and ultimately decided in favour of the plaintiff. The defendants appealed to the Sudder Court, which refused to examine the witnesses rejected by the Zillah Court, and affirmed the decree of that Court. On appeal to Her Majesty in Council, the Judicial Committee remitted the case back to the Sudder Court, being of opinion that the refusal by that Court to permit the examination of the witnesses tendered was irregular, and that no decision could be come to upon the merits under such circumstances. JESWUNT SINGJEE UBBY SINGJEE *v.* JET SINGJEE UBBY SINGJEE [2 Moore's I. A., 424

66. ———— *Ground for remand.*—A lower Court having allowed some of the witnesses of the plaintiff to depart without taking their evidence, the plaintiff objected to its taking the evidence of more of the defendant's witnesses than of his own. Upon this the Court allowed some of the defendant's witnesses to leave the Court without examining them The case, on coming up to the High Court, was remanded for examination of all the remaining witnesses and a fresh decision. GOPEE OJHA *v.* HUR GOBIND SINGH . 12 W. R., 229

67. ———— *Application to re-examine after consent to allow evidence in one suit to be evidence in others.*—Five suits having been brought to recover a balance of accounts from defendants, who were alleged to be partners of a trading concern, and as such liable, certain witnesses were examined in four of the cases in which the plaintiff in one of the suits was not a party, and at his request the evidence taken in those cases was allowed to be used as evidence in his case, and then the witnesses were discharged. Two days after this he applied to have the witnesses re-examined, giving no reason for his application, which was refused. *Held* that the refusal was justified in the absence of any new reason for the re-examination. SREENATH ROY *v.* GOLUCK CHUNDER SEIN . . . . 15 W. R., 348

68. ———— Death before delivering legal judgment—*Obligation to hear witnesses again—Consent of parties.*—A suit was dismissed by a Deputy Collector, who dies before recording a legal judgment, whereupon it was made over by the lower Appellate Court for trial to the deceased officer's successor, who decided the case in favour of the plaintiff upon the evidence as it stood on the record without any objection by either party. *Held* that

WITNESS—CIVIL CASES—*continued.*

6 EXAMINATION OF WITNESSES—*continued*

It was [illegible] remand [illegible] unless [illegible] CHUND [illegible] 10 W. R., 70

69. ——— **Recall of witness**—*Witness for plaintiff recalled for defendant—Leave of Court.*—When a witness has been examined on behalf of the plaintiff he cannot be recalled as a witness for the defendant without leave obtained at the end of the first examination. MACKINTOSH *v.* NOBINMONEY DOSSEE . . 2 Ind. Jur., N. S., 160

70. ——— *Examination of witness by Appellate Court.*—Courts should in all cases exercise the powers with which they have been entrusted by the law in the examination of witnesses, if they see that they are not properly examined through the incompetency of those who have the management of the suits. If the Munsif fails to [illegible]

71. ——— **Mode of taking evidence.**—Observations on the improper manner in which the evidence in cases is generally taken in the subordinate Courts, and in which it was taken in this case. PHUL KUAR *v.* SURJAN PANDEY

[I. L. R., 4 All., 240

72. ——— **Irregularity in examination of witness**—*Witness for plaintiff examined in absence of defendant or his pleaders—Irregularity—Objection not taken in time—Evidence Act, s. 167.*—The examination of a material witness of the plaintiff, in the absence of the defendant, his vakil having been removed, and no other vakil then acting for him, is such an irregularity as, if objected to at the proper time, would be fatal to the reception of such evidence. But where no objection was urged during the trial, or until an appeal was interposed, the Judicial Committee held that the objection came too late and could not be sustained, notwithstanding such irregularity and miscarriage, that fact did not taint the whole proceedings so as to prevent the plaintiff recovering upon the other evidence which was sufficient to establish his case. Besides, though the other evidence rendered the evidence improperly admitted immaterial, the Judicial Committee, as there had been an irregularity in the Court below in affirming the judgment, refused to give the costs of the appeal. LOKHARAJEE PANDEY *v.* [illegible] MURALY . . . 8 Moore's I. A., 232

73. ——— *Evidence given without cross-examination* [illegible]—[illegible]

WITNESS—CIVIL CASES—*continued.*

6. EXAMINATION OF WITNESSES—*continued.*

so used. GOBACHAND SIRKAR *v.* RAM NARAIN CHOWDHRY . . 9 W. R., 557

74. ——— **Evidence to contradict witness**—*Contradiction of witness to collateral questions—Right to call evidence to contradict.*—The rule limiting the right to call evidence to contradict witnesses on collateral questions excludes all evidence of facts which are incapable of affording any reasonable presumption or inference as to the principal matter in dispute, the test being whether the fact is one which the party [illegible] would have been allowed himself to prove in evidence. GULAM ALLI BIN KAZI ISMAIL *v.* AGA KHAN [illegible]

[6 Bom., O. C., 93

75. ——— **Evidence of experts**—*Proof of signatures.*—In a suit for arrears of rent for 1273 at an enhanced rate plaintiff relied upon an agreement said to have been executed by defendants in that year. The Assistant Collector found that the agreement had not been executed by defendants. On appeal the Judge called an expert who proved that the signatures of the attesting witnesses were not all genuine, and the decision of the Assistant Collector was affirmed. *Held* that the Judge was wrong in calling for and acting upon the evidence of the expert. BINDESSUREE [illegible] *v.* DOSA [illegible]

[9 W. R., 89

76. ——— **Consent to be bound by particular witness**—*Evidence not legally admissible.*—An agreement to abide by the testimony of a certain witness [illegible] the opposing party to hearsay testimony, but only to such evidence as is legally admissible, i.e., [illegible] as to such facts as the witness can directly speak to. LUCKEYMONEE DOSSEE *v.* [illegible]

[3 W. R., 232

MUNNOO SINGH *v.* AMEER LALL . 6 W. R., 234

77. ——— *Witness sworn in particular manner.*—Where the plaintiff based her claim solely on the deposition of the defendant to be taken by his placing his hand on a particular text of the Koran, and the defendant [illegible] in that way, but in the usual way did not prove the claim.—*Held* that there was [illegible] plaintiff to [illegible] in [illegible] MAHOMED [illegible]

[11 W. R., 234

78. ——— [illegible]

[illegible] 11 W. R., 110

79. ——— [illegible]

WITNESS—CIVIL CASES—*continued.*

6. EXAMINATION OF WITNESSES—*continued.*

should not be examined.—*Held* that defendant should not have been bound solely and absolutely by the plaintiff's deposition, but that the other evidence on the record should also have been considered. JUGDEO SINGH *v.* MOLAZIM HOSSEIN . 13 W. R., 108

(*b*) CROSS-EXAMINATION.

80. ———— Right to cross-examine—*Witness called by the Court.*—A witness called by the Court is liable to be cross-examined by any of the parties to a suit. TARINI CHARAN CHOWDHRY *v.* SARODA SUNDARI DASI

[3 B. L. R., A. C., 145 : 11 W. R., 468

81. ———— *Witness called by Court.*—A party summoned by the Court to give evidence is not only required to give answers to the questions put to him by the Court, but the opposite party has a right to cross-examine him. The statement of any person examined is not admissible unless the opposite party has had the opportunity of cross-examining him. GOOROODOSS ROY *v.* GREEDHUR SEIN

[11 W. R., 110

SHURFURAZ MOLLAH *v.* DHUNOO 16 W. R., 257

82. ———— *Co-defendant separately represented.*—One co-defendant, whose interests are separately represented, may cross-examine another. NARASIMMA *v.* KISTNAMA . 1 Mad., 456

83. ———— *Recall of witnesses—Omission to give opportunity for cross-examination.*—A Court of first instance decreed a case *ex-parte* in favour of the plaintiff, and at a re-hearing did not recall the plaintiff's witnesses, whom, therefore, the defendant had no opportunity to cross-examine, and again gave a decree for the plaintiff. The lower Appellate Court rejected the evidence of plaintiff's witnesses, and reversed the decree. *Held* that the Court of first instance should have recalled the plaintiff's witnesses, and given the defendant an opportunity of cross-examination. RAM BAKS LALL *v.* KISHORI MOHAN SHAHA

[3 B. L. R., A. C., 273 : 12 W. R., 130

84. ———— *Refusal to allow cross-examination—Act VIII of 1859, s. 170.*—A defendant failed to appear when ordered to attend under s. 170, Act VIII of 1859. The Judge did not at once pass judgment against him, but called the plaintiff's witnesses, and refused to allow the defendant's vakil, who was present, to cross-examine them. *Held* that the Judge ought to have allowed the defendant's vakil to cross-examine the plaintiff's witnesses. PAKAKTAR *v.* JAKRIRAM BHAKAT

[2 B. L. R., Ap., 12

85. ———— Refusal of witness to answer questions on cross-examination—*Civil Procedure Code, 1859, s. 169—"Lawful excuse."*—A party to a suit tendering himself as a witness, and declining without lawful excuse to answer questions put on cross-examination, was liable to be dealt with under s. 169 of the Civil Procedure Code. "Without lawful excuse" means such an excuse as would in law justify the refusal to give evidence. LEKH RAJ *v.* PALEE RAM

[1 N. W., 162 : Ed. 1873, 241

WITNESS—CIVIL CASES—*continued.*

6. EXAMINATION OF WITNESSES—*concluded.*

86. ———— Cross-examination to credit—*Opinion formed as to credit of witness by another Judge in another case inadmissible.*—Evidence of the particular estimate formed by a Judge in another case of the credit to be attached to the testimony of a witness who is cross-examined in a subsequent trial is inadmissible. IN THE MATTER OF PASUMARTY JUGGAPPA . . . . 4 C. W. N., 684

7. CONSIDERATION AND WEIGHT OF EVIDENCE.

87. ———— Credibility of witnesses—*Power to set aside decision on evidence.*—The credibility of witnesses is a matter altogether for the Court of first instance and the Court which hears a regular appeal; and if these Courts are satisfied that the witnesses are not to be believed, their decision cannot be set aside by the High Court on special appeal, even though upon a general view of the case it should think that, if it had tried the case originally, it might have come to a different conclusion. GOUREE PERSHAD KOONDOO *v.* PRANNATH SURMAH

[10 W. R., 365

88. ———— *Mode of testing credibility—Several witnesses to same facts.*—In examining evidence with a view to test whether several witnesses who bear testimony to the same facts are worthy of credit, it is important to see whether they give their evidence in the same words, or whether they substantially agree, not, indeed, concurring in all the minute particulars of what passed, but with that agreement in substance, and that variation in unimportant details, which are usually found in witnesses intending to speak the truth, and not tutored to tell a particular story. NANA NARAIN RAO *v.* HARREE PUNTH BHAO

[Marsh., 436 : 9 Moore's I. A., 96

89. ———— *Witnesses called to support case giving evidence contrary to it.*—A party who calls a witness to give evidence on his behalf is not necessarily bound by his evidence; but if the evidence is at variance with the truth of his case (*e.g.*, if a witness called to prove execution of a document swears that it was not executed and has the means of knowing the fact), it throws a suspicion on the case which renders the clearest testimony necessary to establish its truth. FUZEELUN BEEBEE *v.* OMDAH BEEBEE . . . 10 W. R., 469

90. ———— *Credit on other matters of witnesses supporting a false case.*—Although it does not necessarily follow that where a witness gives evidence on a particular fact in a case and that fact is found against his evidence, he is to be entirely disbelieved on the other parts of the case he has spoken to, yet where witnesses who were not merely giving an opinion upon an isolated fact in the case, but came into Court to prove the whole case made by the plaintiffs, and that a very special case,

WITNESS—CIVIL CASES—*continued*

7. CONSIDERATION AND WEIGHT OF EVIDENCE—*continued*

and it is shown to be a case false in its material *features, much reliance cannot be placed on their* evidence as to any particular questions in the case HABEEBOOLLAH *v* GOUHUR ALLY KHAN
[18 W. R., P. C., 523

91. ———— Ground for refusal to consider evidence—[illegible]

LATORE MISTREE *v* AGAMUDDEE NUSHYO
[14 W. R., 482

92. ———— Mode of weighing evidence —*Consideration of motives for bringing a suit*— Where the evidence in support of a case is doubtful, the Court, in weighing that evidence, may properly take into consideration the motives imputed to the plaintiff as having induced him to sue BIRCH *v* FURZIND ALI 3 N. W., 303

93. ———— [illegible] evidence —In esti- [illegible] mony of a [illegible] rtain conversation took place, is of more value than that of one who says that it did not CHOWDHRY DEBY PERSAD *v* CHOWDHRY DOWLUT SINGH
[6 W. R., P. C., 55: 3 Moore's I. A., 347

94. ———— *Credit of witness a servant or dependant of plaintiff*—The circumstance of a witness being a servant or a dependant of the plaintiff does not of itself disentitle him to credit SHOOBUL CHUNDER KULLEAH *v* KOYLASH CHUNDER MAL . 14 W. R., 23

95. ———— *Rejection of evidence unnecessarily and unjustifiably*—*Held* by NORMAN, *J*, that the Judge was not at liberty to reject, as matters which he could wholly leave out of consideration, any of the evidence before him in a case where the witnesses were unimpeached in their general character and uncontradicted by any testimony on the other side, and where there was no improbability in the facts which they related and that the probative force arising from concurrent testimony was the compound ratio of the probabilities of the testimonies taken singly RADHA KANT DEB *v* KHEMA DOSSEE . . . 7 W. R., 105

96. ———— *Evidence of witnesses found unreliable in criminal case.*—A Judge was held to have done wrong in throwing out the evidence of witnesses tendered by the defendant in a civil action merely because they have been found [illegible] in a criminal [illegible] with reference to a [illegible]

97. ———— *Evidence, Weight of—Witness, Evidence of, part of which is disbelieved, value of*—If a part of the evidence of a witness is disbelieved, other evidence coming from the same quarter must be viewed warily, but that does not exonerate the Court from weighing whatever evidence has actually been tendered and the mode in which it has been met. RAMESWAR KOER *v* BHARAT PERSHAD SAHI 4 C. W. N., 18

98. ———— *Evidence of person who has been convicted of perjury or other offence*—The evidence of a person who has been punished for perjury or of a person who has been convicted of a criminal offence can hardly be entitled to the credit that would be given to the testimony of a person against whom no such imputation can be brought DOONOUN RAI *v* DOORGA LAI 2 N. W., 97

99 ———— *Evidence of truth of witness*—The observation that the evidence of a witness proves too much is not rebutted by the suggestion that it cannot be supposed that the witness was suborned for, if he was possessed of common shrewdness he would not have overdone the thing and then have given rise to such an objection. SOORIAH ROW *v* COTAGHERY BOOCHIAH
[5 W. R., P. C., 127: 2 Moore's I. A., 113

100 ———— *Credibility of witnesses—Professional witness—Witnesses in former cases*—The Privy Council, referring to the generality of the Principal Sudder Ameen's observations as to certain witnesses having given evidence in other cases, observed that, though it was a legitimate object on to a man's credit that he was a professional witness yet to state broadly and generally that a witness had given evidence in other cases, and therefore became unworthy of credit could only tend to increase the indisposition of respectable persons to come into Court as witnesses which was one of the social evils of India LALL BEHAREE LALL *v*. GOPEE BEEBEE . 18 W. R., P. C., 285

101 ———— *Discrepancies in statements of witnesses*—Discrepancies in an account of what took place in a conversation are not a sufficient ground for disbelieving statements made by different witnesses. BHAIT SING *v*. KAITNATH TEWARI . . . . 3 B. L. R., A. C., 333

102 ———— *Ground for discrediting witness*—A bare allegation by a defendant in his written statement, without any proof in support of it, that a certain person is his inveterate enemy, is not sufficient to discredit that person's testimony KASINATH SHAHA *v* DWARKANATH SIRKAR
[9 B. L. R., 215: 17 W. R., 550

8 PRIVILEGES OF WITNESSES

103 ————Exemption from appearance in Court—*Natives of rank, Prejudices of, to appear in Court*—The prejudices of natives of rank to appear as witnesses in a Court of justice will not be allowed to relax the rule that the best evidence must be produced of which the case is susceptible. RAM MOHUN MOOKERJEE *v* NURSING DEB
[1 Ind. Jur., O. S., 63: W. R., F. B., 54.

WITNESS—CIVIL CASES—*continued.*

8. PRIVILEGES OF WITNESSES—*continued.*

NURSING DEB *v.* RAM MOHUN MOOKERJEE [Marsh., 176: 1 Hay, 379

See MANICKRAM *v.* RAMYAD RAM . 2 W. R., 63

RADHA KISTO SINGH DEO *v.* GUDADHUR BANERJEE [8 W. R., 453

KALEE CHUNDER CHOWDHRY *v.* SURUT SOONDUREE DEBIA . . . . 18 W. R., 45

104. ———— **Exemption from suit in respect of evidence**—*Action for damages—False evidence.*—Witnesses cannot be sued for damages in respect of evidence given by them in a judicial proceeding. If their evidence be false, they should be proceeded against by an indictment for perjury. GUNESH DUTT SING *v.* MUGNEERAM CHOWDHRY [11 B. L. R., P. C., 321: 17 W. R., 283

105. ———— **Right of suit**—*Slander—Slander uttered by witness whilst under examination in a judicial proceeding.*—A witness in a Court of justice is absolutely privileged as to anything he may say as a witness having reference to the enquiry on which he is called as a witness. The plaintiff sued to recover damages for slander, the statement complained of being alleged in the plaint to have been made by the defendant while being examined as a witness during the hearing of a case before a Magistrate. It was found that the statement was made in answer to questions put to the defendant as a witness and allowed by the Court as relevant to the case. The plaintiff alleged that the statement was made maliciously, that the defendant bore him a grudge, and that it was to give vent to that grudge and to injure his reputation that the statement was made. *Held* that the plaint disclosed no cause of action, and that the suit had been properly dismissed. BHIKUMBER SINGH *v.* BECHARAM SIRCAR. BHIKUMBER SINGH *v.* GOTI KRISTO DAS [I. L. R., 15 Calc., 264

See CHIDAMBARA *v.* THIRUMANI [I. L. R., 10 Mad., 87

106. ———— **Defamation**—*Penal Code, s. 500—Statement by witness.*—*M S* was convicted under s. 500 of the Penal Code of defaming *S S* by making a certain statement when under cross-examination as a witness before a Court of criminal jurisdiction. *Held* that the conviction was bad. The statements of witnesses are privileged; if false, the remedy is by indictment for perjury, and not for defamation. MANJAYA *v.* SESHA SHETTI [I. L. R., 11 Mad., 477

107. ———— *Cause of action—Verbal abuse—Special damage.*—The plaintiff was cited as a witness by one *S* in a suit instituted by him against defendant. After plaintiff's evidence had been concluded, in which he stated that there was no enmity between him and defendant, the defendant was examined by the Court, and stated that there was enmity between him and the plaintiff, and on the Court inquiring to know what was the cause of enmity, defendant used words conveying the meaning that plaintiff's descent was illegitimate. *Held* by BRODHURST, *J.*, that under the circumstances the statement complained of was made by defendant while deposing in the witness-box, and therefore absolutely privileged. *Per* MAHMOOD, *J.* (*contra*), that the question whether or not the statement complained of was made by defendant in course of his deposition, or after it was finished, and when he was no longer in the witness-box, had not been tried, and the order remanding the case for trial on the merits was right. Further, that the English law of slander as forming part of the law of defamation, and as such drawing somewhat arbitrary distinctions between words actionable *per se* and words requiring proof of special or actual damage, is not applicable to this country, either by reason of any statutory provision or by any uniform course of decision sufficient to establish such distinctions as part of the common law of British India; that whilst the English law of defamation recognizes no distinction between defamation as such and personal insult in civil liability, the law of British India recognizes personal insult conveyed by abusive language as actionable *per se* without proof of special or actual damage; that such abusive and insulting language, unless excused or protected by any other rule of law, is in itself a substantive cause of action and a civil injury, apart from defamation, and that malice is an element of liability for abusive and insulting language, and that such malice will be presumed or inferred, unless the contrary is shown; that when the defendant is absolutely privileged and protected by reason of the office or occasion on which he employed such language, he renders himself subject to a civil liability for damage, irrespective of any plea of justification based upon proving the truth of the statements contained in the abusive and insulting [illegible] of; that the rule of English law [illegible] or protection of a witness in regard to defamatory statements made in the witness-box is based upon a public policy which is equally applicable to insulting and abusive language used by such witness; and such statements when made in the witness-box are privileged and protected, even though made maliciously and falsely, so long as they are relevant to the inquiry in the broadest sense of the phrase; and that, even where such statements have no reference to the inquiry, the defendant may prove the absence of malice, and that they were made in good faith for the public good. DAWAN SINGH *v.* MAHIP SINGH . . I. L. R., 10 All., 425

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[I. L. R., 25 Calc., 863

1. PERSONS COMPETENT OR NOT TO BE WITNESSES.

1. ——— Judge—*Competent witness*—A Judge is a competent witness, and can give evidence in a case being tried before himself, even though he laid the complaint, acting as a public officer, provided that he has no personal or pecuniary interest in the subject of the charge, and he is not precluded thereby from dealing judicially with the evidence of which his own forms a part. QUEEN *v.* MUKTA SING . 4 B. L. R., A. Cr., 15: 13 W. R., Cr., 60

See ROUSSEAU *v.* PINTO . 17 W. R., 190

2. ——— Magistrate—*Evidence Act, s. 121—Power of Sessions Judge to compel Magistrate to give evidence—Privilege of witness*—A Sessions Judge finding, in the course of a trial, as regards the examination of the accused person taken by the committing subordinate Magistrate, that the provisions of s. 346 of Act X of 1872 had not been

WITNESS—CRIMINAL CASES—*continued.*

1. PERSONS COMPETENT OR NOT TO BE WITNESSES—*continued.*

fully complied with, summoned the committing Magistrate and took his evidence that the accused person duly made the statement recorded. The Magistrate of the district objected to this proceeding of the Sessions Judge, contending that it was "contrary to law." The Sessions Judge referred the question, whether or not his proceeding was contrary to law, to the High Court. *Per* STUART, *C.J.*, PEARSON, *J.*, OLDFIELD, *J.*, and STRAIGHT, *J.*—That the privilege given by s. 121 of Act I of 1872 is the privilege of the witness, *i.e.*, of the Judge or Magistrate of whom the question is asked: if he waives such privilege, or does not object to answer such question, it does not lie in the mouth of any other person to assert the privilege: the reference, the objection not having been taken by the Subordinate Magistrate, but the Magistrate of the district, should be answered accordingly. *Per* SPANKIE, *J.*—That a Sessions Judge, while trying a case, cannot compel a committing Magistrate to answer questions as to his own conduct in Court as such Magistrate. EMPRESS OF INDIA *v.* CHIDDA KHAN

[I. L. R., 3 All., 573

3. ——— *Judge trying case—Magistrate witness of facts.*—In a case in which a Deputy Magistrate took an active part in the capture of parties charged with having been members of an unlawful assembly,—parties whom he himself tried on that charge,—it was held that he was bound to state to the accused, so far as he could, what were the facts he himself observed, and to which he himself could bear testimony; and the prisoner in such situation had a right, if he thought it desirable, to cross examine the Judge, whose evidence should be recorded, and form part of the record in the case. The proper course, however, for the Deputy Magistrate to have taken in this case would have been to decline to try the case, and to ask that it should be undertaken by some other Judge. IN THE MATTER OF THE PETITION OF HURRO CHUNDER PAUL

[20 W. R., Cr., 76

4. ——— *Conviction, Illegality of.*—A Magistrate cannot himself be a witness in a case in which he is the sole judge of law and fact. *Per* MARKBY, *J.*—Where in such a case he has given his evidence and convicted the accused, his having so acted makes the conviction bad. *Per* PRINSEP, *J.*—The conviction is not absolutely bad. It is open to the Court to uphold the conviction, if it is of opinion that, after rejecting the Magistrate's evidence, there is other evidence sufficient, if believed to support the conviction. EMPRESS *v.* DONNELLY

[I. L. R., 2 Calc., 405

5. ——— *Magistrate sitting on Bench in Appellate Court—Liability to be examined as witness.*—It is undesirable that Magistrates, whose decisions are under appeal, or who have been engaged in promoting the prosecution as police officers concerned in a case, should sit on the Bench beside or converse privately in Court with the Judge who is engaged in trying the prisoner's appeal. If the Appellate Court wishes to ascertain any facts relating to the case from the Magistrate who convicted the accused, he should examine the Magistrate on oath or *solemn affirmation* in the same manner as an ordinary witness. REG. *v.* KASHINATH DINKAR

[8 Bom., Cr., 126

6. ——— *Examination of Magistrate trying case.*—Case in which the High Court permitted a Deputy Magistrate to be examined on behalf of a petitioner whose case was investigated by the Deputy Magistrate. QUEEN *v.* MUDHOOSOODUN ROY . . . 16 W. R., Cr., 49

See S. 121 OF THE EVIDENCE ACT, 1872.

7. ——— Prisoner—*Tendering pardon to prisoner.*—Procedure as to tendering a pardon to a prisoner before examining him as a witness, discussed. QUEEN *v.* GAGALU

[6 B. L. R., Ap., 50: 12 W. R., Cr., 80

8. ——— *Co-defendants, Examination of, as witnesses.*—Where there is no community of interest, any one of a number of prisoners jointly indicted may be called as a witness either for or against his co-defendants. QUEEN *v.* ASHRUFF SHEIK . . . 6 W. R., Cr., 91

9. ——— *Prisoners tried together jointly—Examination of one as witness against another.*—Where two prisoners are tried together for different offences committed in the same transaction, it is improper and illegal to examine one prisoner as a witness against the other. IN THE MATTER OF DAVID . . 5 C. L. R., 574

10. ——— **Person brought up with accused and not discharged.**—A person apprehended by the police and brought before the Magistrate with the accused is, though not discharged by the Magistrate, a competent witness against the accused, provided he be not charged along with the accused. REG. *v.* NARAYAN SUNDAR 5 Bom., Cr., 1

11. ——— **Evidence of woman on charge of adultery.**—A person may call the woman with whom he is accused of having had sexual intercourse as a witness on his behalf. IN RE BECHOO . . . . 6 W. R., Cr., 92

12. ——— **Person against whom affiliation order is sought**—*Criminal Procedure Code (1882), s. 488—Order for maintenance.*—A person against whom an order for maintenance under s. 488 of the Code of Criminal Procedure is sought is a competent witness on his own behalf in such proceedings. HIRA LAL *v.* SAHEB JAN

[I. L. R., 18 All., 107

See NUR MAHOMED *v.* BISMULLA JAN

[I. L. R., 16 Calc., 781

13. ——— *Evidence Act, s. 118—Competency of persons of tender years.*—The competency of a person to testify as a witness is a condition precedent to the administration to him

WITNESS—CRIMINAL CASES —*continued*

1 PERSONS COMPETENT OR NOT TO BE WITNESSES—*concluded.*

of an oath or affirmation and is a question distinct from that of his credibility when he has been sworn or has affirmed In determining the question of competency, the Court, under s 118 of the Evidence [illegible]

standing, he is able to give a rational account of what he has seen or heard or done on a particular occasion If a person of tender years or of very advanced age can satisfy these requirements his competency as a witness is established QUEEN EMPRESS *v* LAL SAHAI I. L. R., 11 All., 183

14 ———— *Evidence Act (I of 1872), s 118—Evidence of a witness illegally pardoned by the police—Meaning of "accused" in s 342 of the Code of Criminal Procedure (Act X of 1882)*—During the course of a police investigation into a case of house-breaking and theft, [illegible] was admissible [illegible] though he had been illegally discharged by the police *Held* also that by the word "accused" in s. 342 of the Code of Cr[illegible] of 1882 is meant a person [illegible]

[I L. R., [illegible]

15 ———— *Accused persons under trial separately for a substantive offence and for abetment of that offence competent witnesses on each other's behalf—Criminal Procedure Code (1882) s 342*—Prisoner *A* was tried for an offence under s 403 of the Indian Penal Code and was convicted but was sent to a Magistrate of higher powers than the convicting Magistrate to be sentenced Whilst his case was pending before the second [illegible]

bar under the circumstances to *A*'s giving evidence for *B* and that *B*'s application ought to have been granted. QUEEN EMPRESS *v* TIRBENI SAHAI [I L. R., 20 All., 420

2 SUMMONING WITNESSES

16 ———— **Dispensing with personal attendance of witnesses**—*Depositions—Trial before Sessions Court*—It is only in extreme cases of delay or expense that the personal attendance of a witness before the Court of Session should be dispensed with and the evidence given by him before the committing Magistrate referred to. EMPRESS *v* MULU I. L. R., 2 All., 646

17. ———— **Application to enforce attendance of witnesses**—*Witnesses for defence—Examination of accused*—In a case under Ch. XV, Code of Criminal Procedure 1861 it was incumbent on the accused either to produce their witnesses or to apply beforehand for a summons to enforce the attendance of any witness who was not likely to appear without a summons; it was not necessary [illegible]

[illegible]

18 ———— **Discharge of witness from attendance**—It is incumbent upon a Court when it discharges a witness from the duty of attendance before the trial is ended to ascertain from the accused whether he has or is likely to have any need of the witness's testimony and if he has such need then to take such steps for insuring the presence of the witness at the required time as may be necessary KHUBBUCKDHAREE SINGH *v* PERSHADEE MUNDUL [22 W. R., Cr., 44

19 ———— **Discretion of Court as to summoning witnesses**—*Criminal Procedure Code 1872 s 192—Discretion of Magistrate as to examining witnesses*—It is entirely within the discretion of a Magistrate conducting a trial in a warrant case to admit evidence on behalf of either side at any stage of the trial, s 192 Act X of 1872, applying to such a case but the Magistrate in exercising the discretion conferred on him by this section, ought to have good reason for allowing witnesses on the part of the prosecution to be interposed in the midst of the case of the accused. QUEEN *v* HARRY SINGH QUEEN *v* HULLODHUR SINGH 21 W. R., Cr 61

20 ———— **Duty of Court as to summoning witnesses** *Criminal Procedure Code, 1872 s 539—Adjournment for appearance of witnesses for defence*—Certain persons were charged before the Magistrate with rioting, and being called upon for their defence named several witnesses, and summonses on the following morning were issued for their appearance but they were not found. The accused then applied for further time for the appearance [illegible]

[illegible] discretion have adjourned the case *Held* further, per JACKSON, J., that the meaning of s. 539 of the Criminal Procedure Code is, that if among the persons named by the accused as witnesses the Magistrate considers that any witness is included for the purpose of vexation and delay, he is to exercise his judgment and enquire whether such witness is

material; but that the section is not intended to enable the Magistrate to enquire into what the defence of the accused person is to be, and to consider whether, on learning the nature of the defence, he is absolutely to abstain from summoning the whole of the witnesses cited by the accused; and further, that in the present case there was not any purpose of vexation or delay, and that by the refusal to grant further time the accused had been probably prejudiced in their defence. EMPRESS *v.* RAJCOOMAR SINGH . . . . I. L. R., 3 Calc., 573

S. C. IN THE MATTER OF THE PETITION OF RAJCOOMAR SINGH . . . 2 C. L. R., 62

21. ———— *Obligation to summon witnesses—Criminal Procedure Code, 1861, Ch. XIV.*—In a case tried under the provisions of Ch. XIV of the Code of Criminal Procedure, the accused were entitled to have their witnesses summoned, and a Magistrate had no power to refuse to summon them. QUEEN *v.* DOORGAGUTTY [11 W. R., Cr., 55

22. ———— *Discretion of Magistrate—Criminal Procedure Code, 1861, s. 262.*—*Held* by BAYLEY, J. (MARKBY, J., *dubitante*), that a Magistrate had a discretion, under s. 262 of the Code of Criminal Procedure, to summon a witness when he was likely to give material evidence on behalf of the accused. IN THE MATTER OF THE PETITION OF AMEER CHAND NOHATTA. QUEEN *v* AMEER CHAND NOHATTA . 13 W. R., Cr., 63

23. ———— *Forcibly rescuing cattle—Act III of 1857, s. 13—Criminal Procedure Code, 1861, s. 262—Summoning witnesses.*—In a case of forcibly rescuing cattle under s. 13, Act III of 1857, in which the accused did not summon any witness, it was held that, even if the accused wanted them summoned, the Magistrate, under s. 262 of the Code of Criminal Procedure, need not have summoned them, unless persuaded that they were likely to give material evidence, and that they would not attend voluntarily. AKBAR TAGUDGEER *v.* PUNCHOO BISWAS . . . . . 10 W. R., Cr., 42

24. ———— *Duty of parties—Criminal Procedure Code, 1861, ss. 261, 262—Attendance of witnesses.*—In a case under Ch. XV of the Code of Criminal Procedure, it was expected that parties would bring their own witnesses with them. If they required the attendance of any witness, they should apply to the Magistrate to cause his attendance; and where they did not so apply, it was sufficient if the Magistrate recorded in his judgment the substance of the defendant's answer. BAGDEE MANJEE *v.* MOHINDRO NARAIN [10 W. R., Cr., 16

25. ———— *Criminal Procedure Code, 1861, s. 186.*—In the case of a charge of an offence triable by the Court of Session alone, the Magistrate was bound, under s. 186 of the Criminal Procedure Code, to summon the complainant's witnesses. QUEEN *v.* ZAKIR ALLY . 8 W. R., Cr., 4

26. ———— *Criminal Procedure Code, 1861, s. 375—Accused person, Right of.*—An accused person is entitled to have examined as a witness any person named in his list of witnesses delivered to the Magistrate; and the Magistrate should take measures to enforce the attendance of such person. QUEEN *v.* ISHAN DUTT [6 B. L. R., Ap., 88 : 15 W. R., Cr., 34

27. ———— *Right of accused to have witness summoned in his defence when he has refused to give in a list in the Magistrate's Court—Criminal Procedure Code (1882), s. 211.*—If an accused person, on being called upon under s. 211 of the Code of Criminal Procedure to give orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, declines to give in such list, he cannot compel the Magistrate after committal to issue any summonses for witnesses on his behalf. Neither under such circumstances will the Sessions Judge be obliged to issue summonses for the attendance of such witnesses unless he is satisfied that their evidence may be material. *Queen-Empress* v. *Har Gobind Singh, I. L. R., 14 All., 242,* referred to. QUEEN-EMPRESS *v.* SHAKIR ALI . . . . . I. L. R., 19 All., 502

28. ———— *Criminal Procedure Code (Act XXV of 1861), ss. 188, 207, 227, and 228—Arrest and detention of witnesses.*—S. 207 of the Criminal Procedure Code gave no power to the Magistrate to call up and examine witnesses for the defence whose names have been given in a list, under s. 227, when the prisoners reserve their defence for the Court of Session; but under s. 228 he was bound to summon them to give evidence before the Court of Session. IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR [4 B. L. R., Ap., 1 : 13 W. R., Cr., 1

29. ———— *Credibility of witnesses*—It is the Magistrate's duty to summon witnesses for the accused who can speak to the facts of the case, and he ought not to determine beforehand what credit he will give to their evidence. IN THE MATTER OF THE PETITION OF MAHIMA CHANDRA SHAH . 4 B. L. R., Ap., 78 : 15 W. R., Cr., 15

30. ———— *Criminal Procedure Code, 1861, ss. 186, 262.*—S. 186 of the Code of Criminal Procedure referred to cases under Ch. XII, which were triable by the Court of Session, and not to cases under Ch. XV, which were triable by a Magistrate. To the latter cases s. 262 applied. BOIDDONATH BANIA *v.* BHEEDOO DOSS [9 W. R., Cr., 3

31. ———— *Right of accused to have witnesses summoned—Criminal Procedure Code, 1872, s. 363.*—Under s. 363, Code of Criminal Procedure, a prisoner was entitled, as a matter of right, to have any witnesses named in the list which

WITNESS—CRIMINAL CASES
—*continued*

2. SUMMONING WITNESSES—*continued*

be delivered to the Magistrate, summoned and examined QUEEN v. PROSUNNO COOMAR MOITLO
[23 W. R., Cr., 56

32.—————— *Criminal Procedure Code, 1861, s 253*—Under s 253 of the Criminal Procedure Code, 1861, it was imperative on the Magistrate to summon the witnesses named by the prisoner QUEEN v. MUDSOODDEEN 2 N. W., 148

33.—— —— *Summoning witnesses for accused—Criminal Procedure Code (Act XXV of 1861) s 253—Per AINSLIE, J*—In a trial under Ch. XIV of the Criminal Procedure Code, the Magistrate was not bound, under s. 253, to summon any witness whom the accused might require. It was only discretionary with him to do so, and in the circumstances of the present case he exercised his discretion rightly in refusing to summon the witnesses asked for *Per PAUL, J (differing)*—The right of an accused to have witnesses for his defence summoned during the pendency of the trial is an ordinary and natural right, and this right was not taken away, but affirmed by s 253; the Magistrate was bound to summon the witnesses, though it was discretionary with him to adjourn the trial In the present case treating it as a matter of discretion only, the Magistrate was wrong in refusing to summon the witnesses required QUEEN v BHOLANATH MOOKERJEE
[7 B L. R., 564: 16 W. R., Cr., 28

34 —————— *Discretion of Magistrate—Criminal Procedure Code, 1861, ss 253, 262 263*—S 253 of the Criminal Procedure Code did not apply to cases triable under Ch XV of that Code; and ss. 262 and 263 were applicable when the offence was not punishable with more than six months' imprisonment; and it was in the discretion of the Magistrate to summon the witnesses for the defence, if he considered their evidence [illegible] voluntarily appear for the purpose of being examined at the time and place appointed for the hearing of the complaint. QUEEN v. MOHURER
[3 N. W., 393

35 —————— *Discretion of Magistrate—Criminal Procedure Code, 1861, ss 227, 228*—Where a prisoner, under s. 227, Code of Criminal Procedure, gave in a list of the witnesses he wished to summon, after his case had been committed, the Magistrate was bound to exercise his discretion upon the point, and to state whether he would summon the witnesses or not, and he ought to state his reasons for not doing so. If he thought the witnesses were included in the list for the purpose of delay, he should proceed under s. 228 of the Code QUEEN v. RAJCOOMAR MOOKERJEE . . 10 W. R., Cr., 14

36 —— —————— *Discretion of Magistrate—Criminal Procedure Code, 1872 ss 215, 362*—It was not incumbent on a Magistrate to summon every person named as a witness by the complaint. S 215 expl 3, of the Criminal Procedure Code, 1872 must be read with s. 362, which vested a discretionary power in the Magistrate. JELDHARI SINGH v. SHUNKUR DOYAL
[23 W. R., Cr., 9

See, however, EMPRESS v. HEMATULLA
[I. L. R., 3 Calc., 389

EMPRESS OF INDIA v. KASHI
[I. L. R., 2 All., 417

QUEEN v. PURASURAMA NAIKAR
[I. L. R., 4 Mad., 320

ANONYMOUS 8 Mad., Ap., 5

37. *Criminal Procedure Code, 1861, Ch XII*—In a case of an offence (such as hurt, under s 323, Penal Code) [illegible]

38 *Criminal Procedure Code, 1869, s 131 Claims to stolen property*—Petitioner was charged with the theft of certain money found in his house and acquitted. Proclamation having been made for claimants to come in and claim the property no one appeared whereupon petitioner preferred his claim and asked the Assistant Magistrate to summon certain witnesses but the Assistant Magistrate refused to do so, and disallowed his claim, the Magistrate on appeal declining to interfere On reference by the Judge the High Court held that the Assistant Magistrate was bound to summon the witnesses named by the petitioner set aside that officer's order, and directed him to dispose of the case after taking due steps for securing the attendance of the witnesses in question SOOKHAN SAHOO v GOVERNMENT . 18 W. R., Cr., 5

39 — *Issue of summons—Criminal Procedure Code (Act XXV of 1861), s 319*—Although there was no mention in Ch. XXII of Act XXV of 1861 of any particular provisions under which witnesses might be summoned, yet it was the duty of the Court, if parties could not procure the attendance of their witness, to issue summonses for their attendance IN THE MATTER OF THE PETITION OF SHAMASANKAR MAJUMDAR
[9 B. L. R., Ap., 45

SHAMASUNKUR MOZOOMDAR v ANUNDMOYEE DASSYA . . . . 18 W. R., Cr., 64

40 —— *Ground for postponement of case*—A Magistrate was held to be right, under the circumstances, in not postponing the case for the purpose of summoning witnesses for one of the parties. IN THE MATTER OF THE PETITION OF GAVINDA CHANDRA GHOSE . 9 B. L. R., Ap., 29

41. — *Non-attendance of witnesses—Criminal Procedure Code 1861 s 147—Ground for adjournment of trial*—In a trial held

WITNESS—CRIMINAL CASES —*continued.*

2. SUMMONING WITNESSES—*continued.*

under Ch. XV of the Criminal Procedure Code, it was not an irregularity to adjourn the trial, under s. 269, for the purpose of allowing the accused to secure the attendance of his witnesses. As a general rule, a prisoner should have his witnesses present on the day of trial. QUEEN *v.* DINOO ROY

[16 W. R., Cr., 21

42. ——————— *Refusal of a Magistrate to summon prisoner's witnesses—Criminal Procedure Code (Act X of 1872), s. 359.*—A Magistrate was not at liberty to refuse to summon a witness tendered by an accused person, except on the grounds specified in s. 359 of the Criminal Procedure Code; and if he did refuse, he was bound to proceed under that section. The fact that the accused declines to examine a witness is no reason for refusing to summon him to meet fresh evidence given subsequent to the defence being closed. IN THE MATTER OF THE PETITION OF DEELA MAHTON *v.* SHEO DYAL KOERI . . I. L. R., 6 Calc., 714

S. C. IN THE MATTER OF DEELA MAHTON

[S C. L. R., 70

43. ——————— *Criminal Procedure Code, 1872, s. 359—Witness for the defence—Failure to attend—Refusal to re-summon.*—On the 30th March 1881 an accused person on his trial before a Magistrate asked that a certain witness might be summoned on his behalf. The Magistrate ordered a summons to be issued for the attendance of such witness on the 18th April, to which day the further hearing of the case was adjourned. There was some delay in the service of the summons, and such witness did not attend on that day. The Magistrate refused an application by the accused for the issue of a second summons to such witness, with reference to s. 359 of Act X of 1872, on the ground that such application was not made in "good faith." *Held* that the provisions of s. 359 of Act X of 1872 were clearly inapplicable to the case as it stood before the Magistrate on the 18th April, and he was bound to make a further attempt—the first attempt seemed to have been nominal merely—to secure the attendance of the absent witness. EMPRESS *v.* RUKN-UD-DIN . . . . I. L. R., 4 All., 5

44. ——————— *Witness for defence—Refusal by Magistrate to summon witness under Criminal Procedure Code, 1882, s. 216—Witness summoned by Sessions Court—Criminal Procedure Code, 1882, ss. 291, 540.*—Upon the committal of certain persons for trial before the Sessions Court for offences under the Penal Code, each of the prisoners, under s. 211 of the Criminal Procedure Code, gave in a written list of the persons whom he wished to be summoned to give evidence at the trial. On each of these lists the name of a particular person was entered, who objected under s. 216 to being summoned, on the ground that the summons was desired for vexatious purposes only and that there were no reasonable grounds for believing that any evidence he could give would be material. Upon this objection, the committing Magistrate passed an order requiring the prisoners to satisfy him that there were reasonable grounds for believing that the objector's evidence was material, and, having heard arguments on both sides, passed an order refusing to issue the summons. The only ground stated by the Magistrate for this order was that he thought the reasons assigned for the application to have the objector summoned were insufficient. Subsequent to the order, and before the trial in the Sessions Court had begun, the Sessions Judge, upon an application filed on behalf of the prisoner, passed an order directing that the objector should be summoned to give evidence. The order assigned no reasons, and was passed in the absence of the objector or of any person representing him, and without notice to show cause being issued to him. The objector applied to the High Court for revision of the order on the ground that the Sessions Judge had no jurisdiction to make it. *Held* that, when a Magistrate refuses, under s. 216 of the Criminal Procedure Code, to summon a witness included in the list of the accused, he must record his reasons for such refusal, and such reasons must show that the evidence of such witness is not material; that the ground stated by the Magistrate, *viz.*, that the reasons assigned for the application to have the objector summoned were insufficient, did not show that the evidence was not material; that the Sessions Judge had jurisdiction to make the order complained of; and that, even if he had not, it would not, under the circumstances, be desirable to interfere with his order in revision. *Per* STRAIGHT, *J.*, that s. 540 is not the only provision of the Criminal Procedure Code which confers on a Sessions Judge powers of the kind exercised by him in this case. Under s. 291, though the summoning of witnesses by an accused through the medium of the Sessions Judge is not a matter of right, yet the Judge has an inherent power, if he thinks proper to exercise it, to sanction the summoning of other witnesses than those named in the list delivered to the committing Magistrate. IN THE MATTER OF THE PETITION OF THE RAJAH OF KANTIT . . . . I. L. R., 8 All., 668

45. ——————— *Refusal to summon witnesses not declared material unless expenses are paid.*—A prisoner who was about to be committed to the Sessions Court presented to the Magistrate a list of witnesses whom he desired to have summoned to give evidence on his behalf at the trial, and on being asked by the Magistrate why he desired to summon the witnesses, the prisoner declined to state his reason. *Held* that the Magistrate was at liberty to decline to summon the persons named in the list on the prisoner declining to satisfy him that they were material witnesses; but the Magistrate ought to have fixed the amount which he considered necessary to defray the cost of the attendance of the persons named, and intimated to the prisoner his readiness to issue summonses on that amount being deposited. The High Court called for the record for the purpose of seeing whether any of the persons named in the list were likely to be able to give material evidence. SUBBARAYA MUDALI *v.* QUEEN . 4 Mad., 81

WITNESS—CRIMINAL CASES —*continued*

2 SUMMONING WITNESSES—*continued*

46 —— *Omission to take steps to summon witnesses* —A complainant in a case who mentioned the names of several witnesses on his behalf was requested to produce them on a certain date Instead of doing that, he produced only two witnesses who were examined. *Held* that, as the complainant did not apply to the Magistrate to issue summonses on the other witnesses, or ask him to proceed under s 262, Code of Criminal Procedure, 1861, the Magistrate was not wrong in law in deciding the case on the evidence which was before him QUEEN *v* NOTOBUR BEBA 15 W R, Cr., 87

47 —— *Refusal to summon witness for accused—Participation in charge —Illegal conviction* —A refusal to summon witnesses cited by an accused, on the ground of their being implicated in the charge vitiates the trial and conviction RAM SHAHAI CHOWDHRY *v* SANKER BAHADUR 6 B L R., Ap , 65 : 15 W R., Cr , 7

48 —— *Refusal to summon witnesses named for the defence* —Where the Subordinate Magistrate convicted certain persons without allowing them a proper opportunity for the summoning and attendance of witnesses named for the defence the High Court quashed the conviction and directed the Subordinate Magistrate to re-hear the case ANONYMOUS 5 Mad , Ap , 27

49 —— *Criminal Procedure Code, 1872, s 362—Warrant case —Refusal of Magistrate to summon witness named by accused—Error or defect in proceedings* —Where the Mag s [illegible] summon such person, as required by s. 362 of the Criminal Procedure Code —*Held* that the conviction of the accused person must be set aside and the case be reopened by such Magistrate, and the application by the accused for the examination of such person be disposed of according to law IN THE MATTER OF THE PETITION OF SAT NARAIN SINGH

[I. L. R., 3 All., 393

50 —— *Criminal Procedure Code, 1882, ss 256, 257—Right of accused to call witness upon charge being framed in a warrant case* —The accused was charged with having commit [illegible] produce witnesses if the case were [illegible] the Magistrate refused postponement on the ground that at the outset the accused had stated that he had no witnesses The accused moved the High Court and stated in his affidavit that what he had meant was that he had no witnesses present in Court. *Held* that, under ss. 256 and 257 of the Criminal Procedure Code, the accused was, as of right, entitled to an adjournment for the purpose of adducing evidence in defence. [illegible] *v* JAGAT CHANDRA BANERJEE

[1 C. W. N., 313

51 —— *Right of accused to have witnesses re-summoned and re-heard—Criminal Procedure Code (Act X of 1882), s 350 (a), s 537—Commencement of proceedings—Interlocutory orders Trial Meaning of—Right to have witnesses summoned and re-heard—Irregularity—Refusal to recall witnesses* —An accused person does not lose the right of having the witnesses re-summoned and re-heard under [illegible] (a), s 350, of the Criminal Procedure Code, because an interlocutory application for enforcing the attendance of certain witnesses has been made and granted not at the trial, but before the trial and with a view to the trial The proper time for making such application is when the trial commences before the Magistrate The expression "trial" means the proceeding which commences when the case is called on with the Magistrate on the Bench, the accused in the dock, and the representatives of the prosecution and for the defence, if the accused be defended, present in Court for the hearing of the case S. 537 of the Criminal Procedure Code cannot cure the defect in the proceedings by reason of the Magistrate's refusal to re-summon and re-hear the witnesses in contravention of prov (a) s. 350 GOBERSIRDA *v* QUEEN EMPRESS

[I. L. R., 25 Calc., 603
2 C. W. N., 405

52. —— *Right of accused—Compelling attendance of witnesses—Defence—Criminal Procedure Code (Act X of 1882) s 257* —Certain witnesses who had been summoned for the accused failed to appear on the day of trial and the Deputy Magistrate refused to adjourn the hearing or to issue fresh processes for the attendance of the defendant's witnesses on the ground that they were all friends of the accused who would come to Court if the accused desired it The prisoners were convicted. *Held* the conviction must be set aside, the Magistrate having once granted processes, he was bound to assist the accused in enforcing the attendance of his witnesses. QUEEN EMPRESS *v* BHAGAWAN CHOWDHRY I. L. R., 10 Calc., 931

53 —— *Non-attendance of witness, Inquiry into reasons for—Criminal Procedure Code 1861 s 2 [illegible]* —It was held that an enquiry should be made into the excuse given by a person for his non-attendance as a witness before enforcing a fine for such non-attendance in order that the Sessions Judge or other authority might fairly exercise the discretion given him by s. 2[illegible] of the Criminal Procedure Code QUEEN *v* AMEER KHAN IN RE [illegible] 2 N. W., 113

54. —— *Mode of summoning witnesses—Non-appearance to appear* —A subordinate Magistrate cannot [illegible] by recognizances to appear before him [illegible]

WITNESS—CRIMINAL CASES —*continued.*

2. SUMMONING WITNESSES—*continued.*

proper course to enforce attendance is by summons and, if that fails, by warrant. ANONYMOUS [4 Mad., Ap., 6

See ANONYMOUS . . 4 Mad., Ap., 17

VENKATAPPAH *v.* PAPAMMAH . 5 Mad., 132.

55. ———— *Criminal Procedure Code, 1861, s. 191—Warrant to enforce attendance of witnesses.*—A Magistrate was not bound, under s. 191 of the Code of Criminal Procedure, to enforce the attendance of witnesses by warrant except upon proof of due service of summons. IN THE MATTER OF THE PETITION OF ABDOOR RUHMAN [7 W. R., Cr., 37

QUEEN *v.* SUTHERLAND. QUEEN *v.* NARAIN SINGH . . . . 14 W. R., Cr., 20

56. ———— *Criminal Procedure Code, ss. 76, 81, and 160—Investigation by police—Power of Magistrate to issue warrant for arrest and production of witness—Penal Code, s. 174.*—Where a District Magistrate issued a warrant for the arrest and production of a witness for the purpose of giving evidence at an investigation held by the police, and in attempting to execute such warrant the police arrested the wrong person and were assaulted in the attempt,—*Held* that, apart from the fact that the attempt to arrest was made on the wrong person, a District Magistrate has no authority to issue a warrant for the production of a witness at an investigation by a police officer, but only before his own Court under ss. 76 and 81 of the Code of Criminal Procedure. *Held* also that, as the investigation was held by a police officer under Ch. XIV of the Criminal Procedure Code, the proper course was for the Sub-Inspector of Police to require the attendance of the witness under s. 160 of the Code of Criminal Procedure, and, on failure by her to comply with such order, prosecute her under s. 174 of the Penal Code. QUEEN-EMPRESS *v.* JOGENDRA NATH MUKERJEE [I. L. R., 24 Calc., 320
1 C. W. N., 154

57. ———— *Issuing summons to witnesses out of jurisdiction.*—Magistrates may, under the Criminal Procedure Code, issue summonses for service upon witnesses beyond the limits of their districts. (COLLET, *J.*, dissenting.) ANONYMOUS [3 Mad., Ap., 5

58. ———— *Service of summons—Affixing summons to door of house.*—Service of summons on a witness by affixing it to the door of his house was held to be no evidence of his having received it, in a charge brought against him of disobeying the summons. ANONYMOUS [6 Mad., Ap., 29

59. ———— *Service of summons.*—The mere showing to a witness of a summons issued under s. 186 of the Criminal Procedure Code, 1861, is not sufficient service. Either the original should be left with the witness, or it should be exhibited to him, and a copy of it delivered or tendered. REG. *v.* KARSANLAL DANATRAM [5 Bom., Cr., 20

3. AVOIDING SERVICE.

60. ———— **Warrant for apprehension of witness**—*Committal of witness in default of appearance—Criminal Procedure Code, 1861, s. 188.*—S. 188 only empowers a Magistrate to issue a warrant for the apprehension of a witness when he has reason to believe that the witness will not attend to give evidence without being compelled to do so, and it does not empower a Magistrate to commit a witness. IN THE MATTER OF MAHESH CHANDRA BANERJEE. QUEEN *v.* PURNA CHANDRA BANERJEE. QUEEN *v.* KALI SIRKAR [4 B. L. R., Ap., 1: 13 W. R., Cr., 1

4. SWEARING OR AFFIRMATION OF WITNESSES.

61. ———— **Oath or affirmation**—*Criminal Procedure Code, 1861, s. 199—Memorandum of deposition.*—A witness may be examined either on oath or on solemn affirmation, but he cannot both be sworn and put on solemn affirmation at the same time. The memorandum required by s. 199 of the Code of Criminal Procedure should always be appended to the depositions. QUEEN *v.* HOSSEIN SIRDAR [13 W. R., Cr., 17

5. EXAMINATION OF WITNESSES.

(*a*) GENERALLY.

62. ———— **Power of Court to dispense with examination of witnesses**—*Criminal Procedure Code, 1872, s. 362.*—S. 362 of the Code of Criminal Procedure did not give a Magistrate discretion to dispense with the examination of witnesses summoned by the prosecution. QUEEN *v.* PARASURAMA NAIKAR . I. L. R., 4 Mad., 329

63. ———— *Commitment without examining witnesses.*—Where a Magistrate committed a person charged with perjury in a trial before himself to the Sessions without examining the witnesses for the prosecution,—*Held* that the commitment was illegal. QUEEN *v.* CHINNA VEDAGIRI CHETTI . . . . I. L. R., 4 Mad., 227

QUEEN *v.* SREENATH MOOKHOPADHYA [7 W. R., Cr., 45

DINONATH GOPE *v.* SARODA MOOKHOPADHYA [7 W. R., Cr., 47

64. ———— *Power of interference of High Court—Criminal Procedure Code, 1861, s. 363.*—Where it was not shown that there were any witnesses forthcoming for examination other than those whom the Sessions Judge did

WITNESS—CRIMINAL CASES —*continued*

5 EXAMINATION OF WITNESSES—*continued.*

examine, the Court refused, with reference to s 263 Code of Criminal Procedure to interfere with the Sessions Judge's proceedings QUEEN *v* JUMDEN SINGH . . 12 W. R., Cr, 73

65 ——— Duty of defence as to calling witnesses—*Inference from failure to call witnesses*—A prisoner or his counsel is at liberty to offer evidence or not as he thinks proper, and no inference unfavourable to him can be drawn because he takes one course rather than another HURRY CHURN CHUCKERBUTTY *v* EMPRESS

[I. L. R., 10 Calc., 140 13 C. L. R., 358

66 ——— Duty of prosecution as to calling witnesses—*Inferences to be drawn on failure to call witnesses—Misdirection*—It is *primâ facie* the duty of the prosecution to call all the witnesses who prove their connection with the transactions connected with the prosecution, and who must be able to give important information If such witnesses are not called without sufficient reason being shown, the Court may properly draw an inference adverse to the prosecution The only thing that can relieve the prosecutor from calling such witnesses is the reasonable belief that, if called they would not speak the truth No such corresponding inference can be drawn against an accused. IN THE MATTER OF THE PETITION OF DHUNNO KAZI EMPRESS *v* DHUNNO KAZI I. L. R., 8 Calc., 121

S C DHUNNO KAZI *v* EMPRESS

[10 C. L. R., 151

67. ——— *Obligation to call witnesses examined before Magistrate*—Where a Sessions Judge gave it as a sufficient reason for the non production of certain witness in Court on the part of the prosecution that they had been

[illegible]

Court. In conducting a case for the prosecution all the persons who are alleged or known to have knowledge of the facts ought to be brought before the Court and examined QUEEN EMPRESS *v* RAM SAHAI LALL . . I. L. R., 10 Calc., 1070

68 ——— *Trial in Sessions Court—Non production of material witnesses for Crown—Duty of public prosecutor*—It is the duty of the Public Prosecutor at a trial before the Court of Session to call and examine all material witnesses sent up to the Court on behalf of the prosecution, and the Judge is bound to hear all the evidence upon the charge. The Public Prosecutor is not bound to call any witnesses who will not, in his opinion, speak [illegible]

[illegible]

unfavourable to the prosecution must be drawn from the non production of the witnesses QUEEN EMPRESS *v* TRILA . I. L. R., 7 All., 904

69. ——— *Discretion of Public Prosecutor as to calling witnesses whose names are returned in the calendar—Practice*—In a trial before a Court of Session or a High Court, it is entirely in the discretion of the Public Prosecutor conducting the case for the Crown to call or not to call any witness or witnesses whose names appear in the calendar as witnesses for the Crown QUEEN EMPRESS *v* DURGA . I. L. R., 10 All., 84

70. ——— *Witness for Crown tendered at Sessions trial who had not been examined by committing Magistrate*—At a trial before the High Court or the Court of Session, the Crown cannot demand as of right that any witness who was not examined by the committing Magistrate either before commitment or under s 219 of the Code after it should be called and examined The Court may call and examine such a witness if it considers it necessary in the interests of justice QUEEN EMPRESS *v* HATFIELD

[I. L. R., 14 All., 212

71. ——— *Witness for Crown 'not called' at Sessions trial, though examined before the committing Magistrate—Duty of the prosecution with regard to the production of such witness*—At a trial before the High Court in the exercise of its original criminal jurisdiction it is not the duty either of the prosecution or of the Court to examine any witness merely because he was examined as a witness for the Crown before the committing Magistrate, if the prosecution is of opinion that no reliance can be placed on such witness's testimony All that the prosecution is bound to do is to have the witnesses who were examined before the committing Magistrate present at the trial so as to give the Court or Counsel for the defence, as the case may be, an opportunity of examining them. *In the matter of the petition of Dhunno Kazi I. L. R., 8 Calc., 121, and Empress of India v. Kashiprosono Dass, I. L. R., 14 Calc., 245* approved. *Empress v. Grish Chunder Talukdar, I. L. R., 5 Calc., 614* and *Queen v. Ishan Dutt, 6 B. L. R., Ap., 84: 15 W. R., Cr., 31* dissented from. QUEEN EMPRESS *v* STANTON

[I. L. R., 14 All., 521

72. ——— *Obligation of Court of Session to examine all witnesses sent up by the committing Magistrate*—It is the duty of a Sessions Court to examine all the witnesses sent up by the committing Magistrate That Court is not justified in rejecting any of the witnesses so sent up unless it has good reason to believe that a witness came into the Court to give what he previously prepared by way of giving false evidence. QUEEN EMPRESS *v* BANARASI . I. L. R., 15 All., 0

73. ——— *Record of previous ... —Presidency Magistrates Act (IV of 1877), s 8?, ... 12*—A ... of a ...

WITNESS—CRIMINAL CASES
—*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

mentioned in expl. 2 of s. 87 of Act IV of 1877, is not a continuation of the original prosecution from which the accused has been discharged. On the revival of the prosecution, all the witnesses on whose evidence the prosecution intend to rely must be examined before the Magistrate; and if any of them were examined at the time of the original prosecution, they must be examined *de novo.* EMPRESS *v.* CHUNDER NATH DUTT

[I. L. R., 5 Calc., 121: 4 C. L. R., 305

74. ——— **Witnesses for prosecution** —*Witness examined by prosecution after defence.*—It is irregular to allow a witness to be examined on behalf of the prosecution after the prisoner has made his defence, when the witness is not one to contradict any new case set up by the prisoner. QUEEN *v.* CHOTEY LAL . . . . 3 N. W., 271

QUEEN *v.* SHAMKISHORE HOLDAR

[13 W. R., Cr., 36

Where, however, the prisoner had full notice of the evidence which was to be given by such witness, and made his defence, in allusion to the evidence of the witness, the High Court refused to set aside the conviction, having regard to s. 439 of the Code of Criminal Procedure. QUEEN *v.* SHAM KISHORE HOLDAR . . . . 13 W. R., Cr., 36

75. ——— *Criminal Procedure Code, 1861, s. 372—Recalling witness for prosecution.*—Under s. 372 of the Code of Criminal Procedure, an accused should be called upon to enter upon his defence and to produce his evidence when the case for the prosecution has been brought to a close. Where, therefore, one witness for the prosecution was recalled after the prisoner had made his defence, and the prisoner had no opportunity of calling evidence with reference to the evidence of that witness, the High Court quashed the conviction and ordered a new trial. QUEEN *v.* ASSANOOLLAH

[13 W. R., Cr., 15

76. ——— **Witnesses for defence**—*Criminal Procedure Code, 1861, s. 372—Duty of Court as to witnesses for defence.*—Under s. 372 of the Code of Criminal Procedure, the accused should be asked, at the end of the case for the prosecution, to produce his evidence, and it is at that point the duty of the Court of Session to ascertain who the witnesses are whom the prisoner desires to examine in his defence. QUEEN *v.* MOOKUN

[12 W. R., Cr., 22

77. ——— *Omission to examine witnesses for accused.*—The Court quashed the sentence which was passed upon a prisoner who had not been asked if he had any witness to call, although he was tried at the same time with others who had been so asked. BHUGWAN *v.* DOYAL GOPE

[10 W. R., Cr., 7

78. ——— *Criminal Procedure Code (Act XXV of 1861), s. 266—Witnesses attending voluntarily.*—In cases coming under Ch. XXV of Act XXV of 1861, to which s. 266 applied, and not s. 252, the Magistrate was not obliged to call on the accused to produce his witnesses, but he was bound to hear them if they attended voluntarily, as by s. 266, read with s. 262, they were supposed to do. IN RE BHIKA ROY

[7 B. L. R., 568 note

S. C. BHIKHA ROY *v.* DHOTUN ROY

[10 W. R., Cr., 36

79. ——— *Obligation of Magistrate to hear witnesses—Criminal Procedure Code, 1861, s. 266.*—S. 266 of the Code of Criminal Procedure only required the Magistrate to hear such witnesses as the accused shall produce in his defence. ANONYMOUS . . . . 4 Mad., Ap., 29

QUEEN *v.* AMEER CHAND NOHATTA

[13 W. R., Cr., 63

80. ——— *Refusal of Court to allow witness for defence to be examined—Illegal conviction—Criminal Procedure Code (Act XXV of 1861), s. 266.*—Conviction set aside on the ground of the Magistrate's irregularity in refusing, in a trial before him under Ch. XV of the Criminal Procedure Code, to allow the examination of a witness who had been tendered on behalf of the accused. QUEEN *v.* MAHIMA CHANDRA CHUCKERBUTTY

[4 B. L. R., Ap., 77: 12 W. R., Cr., 77

81. ——— *Criminal Procedure Code (1882), ss. 210 and 212—Sessions case—Defence reserved—Power of Magistrate to examine witnesses named for the defence.*—The fact that an accused person committed to a Court of Session by a Magistrate has reserved his defence, does not preclude the Magistrate from acting under s. 212 of the Code of Criminal Procedure, and examining any witnesses named by the accused as witnesses whom he intended to call in the Sessions Court. IN THE MATTER OF THE PETITION OF RUDRA SINGH

[I. L. R., 18 All., 380

82. ——— *Criminal Procedure Code (1882), ss. 202 and 540—Summons case.*—Where a Magistrate before whom a complaint was made held an inquiry under s. 202 of the Criminal Procedure Code for the purpose of ascertaining the truth or falsehood of the complaint before issuing process, and, after holding such inquiry, summoned the accused, examined witnesses on both sides, and, after a short adjournment, examined a witness called by himself, and found the accused guilty under s. 341 of the Penal Code,—*Held* that the Magistrate was strictly within his rights under s. 540 of the Criminal Procedure Code in receiving fresh evidence after evidence on both sides had been taken, and the case adjourned for judgment, inasmuch as the case was still a pending case when such evidence was taken. IN THE MATTER OF ANANDA CHUNDER SINGH *v.* BASU MUDH . . I. L. R., 24 Calc., 167

83. ——— *Witnesses under examination—Threatening of witnesses by Court.*—It is illegal on the part of a Court to threaten witnesses with the penalties of the law unless

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they are evidently giving wilfully false evidence or persistently refusing to give evidence of facts which must be within their knowledge. QUEEN-EMPRESS v. HARGOBIND SINGH

[I. L. R., 14 All., 242

84. ———— Recording evidence of witness—*Obligation to record evidence of witnesses.*—If a person is before the Court as a witness, his evidence must be recorded as the law directs; if he is not a witness, and is not examined as such, the Judge has no right to allude to his having made any statement. QUEEN v. PHOOLCHAND *alias* PHOLEEL AHIR . . . 8 W. R., Cr., 11

85. ———————— *Note of deposition—Criminal Procedure Code, 1861, s. 195.*—A separate note of each witness's deposition was required to be taken by s. 195 of the Code of Criminal Procedure, 1861, which was not satisfied by a statement that a witness "deposes as last witness." REG. v. BYHA VALAD SURJIM . . 1 Bom., 91

86. ——— Mode of examination—*Examination in absence of accused.*—It is illegal to examine the witnesses for the defence and to pass sentence in the absence of the accused. BHOOBAM v. ALLAHO KOLITA . . 1 B. L. R., S. N., 8

QUEEN v. RAMNATH . . 7 W. R., Cr., 45

87. ———— ———— *Examination in absence of accused.*—Where witnesses are not examined in the presence of the accused, the conviction will be quashed. QUEEN v. LALLA CHOWDRY

[2 N. W., 49

QUEEN v. RAMNATH . . 7 W. R., Cr., 45

ANONYMOUS . . 3 Mad., Ap., 31

QUEEN v. RAJCOOMAR SINGH 8 W. R., Cr., 17

QUEEN v. RAMDHUN SINGH . 11 W. R., Cr., 22

QUEEN v. RAM DASS BOISTUB

[11 W. R., Cr., 35

QUEEN v. RUSSICK DOSS 24 W. R., Cr., 70

ALI MEAH v. MAGISTRATE OF CHITTAGONG

[25 W. R., Cr., 14

88. ———————— *Evidence not taken in presence of accused—Criminal Procedure Code, 1861, s. 194.*—When the accused has been arrested, the evidence of a witness for the prosecution ought, under s. 194 of the Code of Criminal Procedure, to be taken in the presence of the accused. QUEEN v. HOSSAIN ALI CHOWDHRY

[8 W. R., Cr., 74

89. ———————— *Criminal Procedure Code, 1872, s. 327—Evidence taken in absence* [illegible]

90. ———————— *Evidence taken in absence of accused—Warrant cases.*—It is [illegible] irregular in a warrant case for a Deputy Magistrate to take the evidence of the complainant and certain witnesses on behalf of the prosecution in the absence of the accused. All that the accused has a right to expect after the charge has been framed is that the complainant and witnesses who had been examined in his presence before the charge was framed should be recalled for the purposes of cross-examination. QUEEN v. KASSY SINGH. QUEEN v. [illegible] SINGH . . 21 W. R., Cr., 61

91. — *Deposition taken in absence of accused—Criminal Procedure Code, 1872, s. 327.*—S. 327 of the Criminal Procedure Code, 1872, which permitted the depositions of a witness to be taken in the absence of an accused person who had absconded, did not apply to a deposition taken before that Code was passed. Where s. 327 did apply, it was necessary to show that when the former deposition was taken the accused had absconded, and after due pursuit could not be arrested. QUEEN v. FUWARUE DHAREE

[21 W. R., Cr., 1[illegible]]

92. *Duty of committing Magistrate—Examination on oath in absence of accused—Statements of witnesses.*—The Magistrate to whom a complaint was made examined certain persons on oath in the absence of the accused, merely for the purpose of ascertaining whether there was any, and what case against the prisoners, and he did not take down in writing the statements of the persons examined. *Held* that the Magistrate was wrong in examining the witnesses on oath in the absence of the accused, or for the purpose of finding out whether there was a case; but that, having done so, he was not bound to take down their statements in writing. IN THE MATTER OF THE PETITION OF ASGUR HOSSEIN. EMPRESS v. ASGUR HOSSEIN

[I. L. R., 6 Calc., 774

S. C. IN RE ASGUR HOSSEIN 8 C. L. R., 12[illegible]

93. —— *Examination of [illegible] in absence of accused—Criminal Procedure Code, 1872, s. 327—Power to quash commitment.*—An accused who was charged with murder not being found, the witnesses were examined under s. 327 of Act X of 1872 in his absence. The accused was subsequently arrested and committed on the strength of the evidence taken in his absence. [illegible] Sessions Court he pleaded not guilty. *Held* that the prisoner having been put upon his trial and having pleaded, the commitment could not be quashed. *Held* further that if, in the course of a trial, the Sessions Judge should be of opinion that the prosecution had not had a proper basis for the reception of evidence in the absence of the accused, the proper course is to adjourn the trial under s. [illegible] of the Criminal Procedure Code, and then under s. 321 summon such witnesses as he may deem necessary. *Semble*—The mere absence of questions in the record [illegible]

WITNESS—CRIMINAL CASES —*continued.*

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of a prisoner's statement does not render it inadmissible. EMPRESS *v.* SAGAMBUR [12 C. L. R., 120

94. ——— *Reading deposition of witness.*—In every Sessions trial, no matter how often the case has been before the Court, the witnesses must be examined *de novo* in the same manner as if the case were entirely new and the witnesses had not been examined before. To read to a witness his deposition on a former trial is not an examination of the witness in the presence of the accused. QUEEN *v.* KYAMUT W. R., 1864, Cr., 1

QUEEN *v.* AFFAZUDDEEN . W. R., 1864, Cr., 13

QUEEN *v.* KANYE SHEIKH [W. R., 1864, Cr., 38

QUEEN *v.* KALUNDAR DOSS . . 2 N. W., 100

See also QUEEN *v.* MOHUN BANFOR [22 W. R., Cr., 38

95. ——— *Reading depositions instead of examining witnesses de novo.*—The High Court refused to interfere when the evidence of witnesses given on a previous trial was read over and used in a subsequent trial at the express request of the prisoners, instead of the witnesses being examined *de novo.* PURMESSUR SINGH *v.* SOROOP AUDHI KAREE . . . . 13 W. R., Cr., 40

96. ——— *Criminal Procedure Code, 1882, s. 288—Trial before Court of Session—Evidence given before committing Magistrate used at trial to contradict witnesses.*—S. 288 of the Criminal Procedure Code was never intended to be used so as to enable a Court trying a cause to take a witness's deposition bodily from the committing Magistrate's record, and to treat it as evidence before the Court itself. *Queen* v. *Amanulla, 12 B. L. R., Ap., 15,* referred to. A Judge is bound to put to the witnesses whom he proposes to contradict by their statements made before the committing Magistrate the whole or such portions of their depositions as he intends to rely upon in his decision, so as to afford them an opportunity of explaining their meaning, or denying that they had made any such statements, and so forth. In a case in which the Sessions Court had neglected to apply the above rules, STRAIGHT, *J.,* quashed the conviction. QUEEN-EMPRESS *v.* DAN SAHAI . . . . I. L. R., 7 All., 862

97. ——— Witness offering hearsay evidence—*Duty of Court.*—The moment a witness commences giving evidence which is inadmissible,—*e.g.,* hearsay evidence,—he should be stopped by the Court. It is not safe to rely on a subsequent exhortation to the jury to reject the hearsay evidence, and to decide on the legal evidence alone. QUEEN *v.* PITTAMBUR SIRDAR . . 7 W. R., Cr., 25

QUEEN *v.* KALI CHURN GANGOOLY [7 W. R., Cr., 2

98. ——— Refreshing memory of witness—*Ground for inspecting document to refresh memory of witness—Right to inspect documents.*—*Per* FIELD, *J.*—The grounds upon which the opposite party is permitted to inspect a writing, and to refresh the memory of a witness, are three-fold: (i) to secure the full benefit of the witness's recollection as to the whole of the facts; (ii) to check the use of improper documents; (iii) to compare his oral testimony with his written statement. *Per* FIELD, *J.*—The opposite party has a right to look at any particular writing before or at the moment when the witness uses it to refresh his memory in order to answer a particular question; but if he then neglects to exercise his right, he cannot continue to retain the right throughout the whole of the subsequent examination of the witness. IN THE MATTER OF THE PETITION OF JHUBBOO MAHTON. EMPRESS *v.* JHUBBOO MAHTON . . . I. L. R., 8 Calc., 739

S. C. JHUBBOO MAHTON *v.* EMPRESS [12 C. L. R., 233

99. ——— *Memorandum made by police officer—Criminal Procedure Code, 1872, s. 119.*—In giving evidence a police officer may refresh his memory by referring to documents in which he has, under s. 119 of Act X of 1872, reduced into writing statements of persons examined by him during an investigation, but the documents themselves cannot be used as evidence, and a Judge should not read such documents to a jury in order to point out discrepancies between the evidence and previous statements of the witnesses. ROGHUNI SINGH *v.* EMPRESS [I. L. R., 9 Calc., 455: 11 C. L. R., 569

100. ——— *Memorandum made by police officer—Criminal Procedure Code (Act X of 1872), ss. 119 and 126.*—A prisoner on his trial is not entitled to insist that a memorandum made by a police officer under the provisions of s. 119 of the Code of Criminal Procedure shall, in the course of the examination of such officer, be referred to by the latter for the purpose of refreshing his memory. *Reg.* v. *Uttamchand Kapurchand, 11 Bom., 123,* distinguished. IN THE MATTER OF THE PETITION OF KALI CHURN CHUNARI. EMPRESS *v.* KALI CHURN CHUNARI . . . I. L. R., 8 Calc., 154

S. C. IN THE MATTER OF KALI CHURN CHUNARI [10 C. L. R., 51

101. ——— *Medical witness, Evidence of—Experts—Examination of medical witness examined before Magistrate—Criminal Procedure Code, 1872, s. 323.*—The evidence of a medical man who has seen, and has made a *post-mortem* examination of the corpse of the person touching whose death the inquiry is, is admissible, firstly, to prove the nature of injuries which he observed; and secondly, as evidence of the opinion of an expert as to the manner in which those injuries were inflicted, and as to the cause of death. A medical man who has not seen the corpse is only in a position to give evidence of his opinion as an expert. The proper mode of eliciting such evidence is to put to the witness hypothetically the facts which the evidence of the other witnesses attempts to prove, and

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to ask the witness's opinion on those facts S. 323 of Act X of 1872 did not in any way preclude the [illegible]

memory by referring to a report which he has made of his *post-mortem* examination, but the report itself cannot be treated as evidence, and no facts can be taken therefrom RooGHUNI SINGH *v.* EMPRESS

[I. L. R., 6 Calc., 456: 11 C. L. R., 560

102. —— **Treatment by Court of witnesses for defence.**—When a prisoner makes a [illegible]

[illegible]

(*l*) EXAMINATION BY COURT

103. —— **Examination of witness by Judge**—*Evidence Act, s. 138—Duty of Court in examining witnesses*—At a trial before a Sessions [illegible]

Held that such a course of procedure was irregular and opposed to the provisions of s. 138 of the Evidence Act It is not the province of the Court to examine the witnesses, unless the pleaders on either side have omitted to put some material question or questions; and the Court should, as a general rule, leave the witnesses to the pleaders to be dealt with as laid down in s. 138 of the Act. NOOR BUX KAZI *v.* EMPRESS

[I. L. R., 6 Calc., 279: 7 C. L. R., 335

(*c*) CROSS EXAMINATION.

104 ——— **Duty of Court as to allowing cross-examination**—*Cross-examination of witnesses by accused*—The Judge ought, if requested, to allow the accused an opportunity of cross-examining all witnesses whose depositions have been taken for the prosecution by the committing Magistrate, but whose evidence is dispensed with by the prosecutor at the trial His refusal to do so is, however, not an error in law. EMP. *v.* FATTECHAND VASTACHAND . . . 5 Bom., Cr., 85

WITNESS—CRIMINAL CASES —*continued*

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the right to cross-examine the witnesses for the prosecution after their examination at the judicial inquiry before the Magistrate previous to commitment The fact that the Criminal Procedure Code of 1872 contained an express provision to that effect, which was omitted in the Code of 1882, together with the provision of ss. 210 and 256 of the latter Code, must not be taken to shew an intention on the part of the Legislature to deprive an accused of that right. The express provision in the Code of 1872 was probably thought by the Legislature when framing the Code of 1882, as being redundant seeing that the Evidence Act of 1872 which was passed at the same time as the Criminal Procedure Code of 1872 made sufficient provision on the subject S. 208, moreover does not prohibit cross-examination before a charge is framed It permits a further cross-examination expressly directed to the case found and embodied in the charge, and would enable an accused person, if he has reserved his cross examination, to exercise his right at that time subject to a discretion given to the Magistrate by s. 257 Where depositions of witnesses for the prosecution before the Magistrate previous to commitment were taken without any cross-examination by the accused being allowed, it was held that such depositions were improperly treated as evidence in the Sessions Court as they had not been "duly taken" in the presence of the accused within the meaning of s. 288 of the Code QUEEN EMPRESS *v.* NAGAR SAMBA SAHAO I. L. R., 21 Calc., 612

106 —— *Further cross-examination by accused—Criminal Procedure Code 1882 ss. 256, 257*—D was put upon his trial for having caused grievous hurt to *M* The Magistrate after hearing the evidence for the prosecution, framed a charge under s. 325 of the Penal Code, and on the 6th June 18.6 refused an application by the accused to re-summon the prosecution witnesses for further cross-examination On 19th June on the application of the accused citing some of those witnesses as his own witnesses the Magistrate summoned them, but on the 22nd, when the witnesses so summoned appeared, he refused to allow the accused to cross-examine them, and, upon the accused declining to examine them as his witnesses, recorded them on the evidence on the record *Held* that the Court was wrong in refusing permission to the accused to cross-examine the witnesses present in Court on 22nd June. *Held* further that the accused was not deprived of the right which he had by law of cross-examining the witnesses for the prosecution under s. 257 of the Criminal Procedure Code although they were summoned as his witnesses. *Held* also that the application of the 6th June being under s. 257, and not under s. 256, the order of the Deputy Magistrate of that date was wrong Mowla Bux *v.* DEBENDRA SARKAR . 1 C. W. N., 10

107. —— **Right to cross-examine**—*Right of an accused to cross-examine witnesses*—The right of an accused party to cross-examine witnesses [illegible] to a right to cross-examine the w[illegible]

WITNESS—CRIMINAL CASES —*continued.*

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for the prosecution called against him. If he wishes to avail himself of evidence which has been given, or which can be given by a witness called for another of the parties accused, he must call him as his own witness. QUEEN *v.* SURROOPCHUNDER PAUL [12 W. R., Cr., 75

108. ——— *Evidence Act, s. 165—Witness called by the Court.*—Witnesses summoned on behalf of the prosecution, and not called, ought to be placed in the box for cross-examination, in order that the defence may have the opportunity of exercising this right, and *à fortiori*, if such a witness is called and examined by the Court under s. 165 of the Evidence Act, the prisoner should be allowed to cross-examine. EMPRESS *v.* GRISH CHUNDER TALUKHDAR [I. L. R., 5 Calc., 614: 5 C. L. R., 364

109. ——— *Witness called by Court—Tendering witnesses for cross-examination—Criminal Procedure Code (Act X of 1882), s. 540.*—In a trial before the Sessions Court the prosecution is not bound to tender for cross-examination all witnesses called before the committing Magistrate. The Court should not call a witness on whose evidence it could not put implicit reliance. QUEEN-EMPRESS *v.* KALIPROSONNO DOSS [I. L. R., 14 Calc., 245

110. ——— *Cross-examination of witness called by the Court—Evidence Act (I of 1872), s. 165—Criminal Procedure Code (1882), s. 540.*—Where in the course of a criminal proceeding a Magistrate himself summoned a witness and examined her under s. 165 of the Evidence Act, but refused to allow the attorney who appeared for the complainant to cross-examine the witness,—*Held* that the Magistrate was wrong in not allowing the complainant's attorney to cross-examine the witness when she was summoned. *Held* also that there is nothing in s. 165 debarring or disqualifying a party to a proceeding from cross-examining any witness summoned by the Court. GOPAL LALL SEAL *v.* MANICK LALL SEAL [I. L. R., 24 Calc., 288

111. ——— *Hostile witness—Evidence Act, s. 154.*—The mere fact that at a Sessions trial a witness tells a different story from that told by him before the Magistrate does not necessarily make him hostile. The proper inference to be drawn from contradictions going to the whole texture of the story is not that the witness is hostile to this side or to that, but that the witness is one who ought not to be believed unless supported by other satisfactory evidence. KALACHAND SIRKAR *v.* QUEEN-EMPRESS . . I. L. R., 13 Calc., 53

112. ——— *Medical witness.*—As to cross-examination by accused of medical witness called in a professional capacity, *see* QUEEN *v.* ISHUN DUTT [6 B. L. R., Ap., 88: 15 W. R., Cr., 34

113. ——— *Evidence Act (II of 1855), s. 34—Cross-examination on previous statements reduced to writing.*—The complainant's pleader was held to be at liberty before the Deputy Magistrate to cross-examine the witnesses for the defence on points respecting which they had made statements before the Joint Magistrate, and he might do so as regards previous statements which were reduced to writing, without showing the writing. S. 34, Act II of 1855, explained. TUKHEYA RAI *v.* TUPSEE KOER . . . 15 W. R., Cr., 23

114. ——— *Evidence Act, 1855, s. 23—Cross-examination on previous statements reduced to writing.*—A witness, when under examination-in-chief before the Court of Session, should not have his attention directed to his deposition before the Magistrate. He might, under s. 23, Act II of 1855, be cross-examined as to previous statements made by him in writing, when his attention might be drawn to the parts of the former writing which were to be used for the purpose of contradicting him. QUEEN *v.* RAMCHUNDER SIRCAR [13 W. R., Cr., 18

115. ——— *Prosecution witness examined before the Magistrate but not called in the Court of Session—Witness called by the defence—Cross-examination by defending counsel.*—Where the prosecution declined to call in the Court of Session a witness for the Crown who had been examined in the Magistrate's Court, and such witness was thereupon placed in the witness box by counsel for the defence, it was *held* that counsel for the defence was not entitled to commence his examination of the witness by questioning him as to what he had deposed in the Magistrate's Court. Questions as to his previous deposition were under the circumstances only admissible by way of cross-examination, with the permission of the Court, if the witness proved himself a hostile witness. QUEEN-EMPRESS *v.* ZAWAR HUSEN I. L. R., 20 All., 155

116. ——— **Right of witness on cross-examination**—*Right to qualify statements.*—A witness ought to be allowed on cross-examination to qualify or correct any statement which he has made in his examination-in-chief. QUEEN *v.* TULSI DOSADH . . . . . 18 W. R., Cr., 57

117. ——— **Right to recall witnesses for cross-examination**—*Cross-examination of, by accused—Witnesses for defence—Record of evidence.*—The charge having been read to the accused person, he stated his defence to the same, upon which the Magistrate, the witnesses for the prosecution being in attendance, called upon the accused to cross-examine them. The accused refused to do so until he had examined the witnesses for the defence who were not in attendance. The Magistrate then discharged the witnesses for the prosecution and adjourned the trial for the production of the witnesses for the defence. *Held per* SPANKIE, *J.*, that the accused was not entitled to have the witnesses for the prosecution summoned, in order that they might be

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cross-examined by the accused on the date fixed for the examination of the witnesses for the defence. *Held also per* SPANKIE, *J.*, that the Magistrate was empowered to record both oral and documentary evidence after the witnesses for the defence had been examined. EMPRESS OF INDIA *v.* BALDEO SAHAI
[I. L. R., 2 All., 253

118. ———— **Cross-examination after reading depositions**—*Irregularity in examination—Criminal Procedure Code, ss. 256, 258.*—At a trial before a Sessions Court, the attorney who appeared for the prisoner suggested to the Court that, to expedite the trial, certain depositions of witnesses for the prosecution, taken before the Magistrate, should be read, and that he should be allowed to cross-examine the witnesses thereupon: to this course the Government Prosecutor and the Court consented. *Held* that this procedure was illegal, but that, inasmuch as it had not occasioned a failure of justice, a new trial should not be granted. SUBBA *v.* QUEEN-EMPRESS . . I. L. R., 9 Mad., 83

119. —— [illegible] **ness after** [illegible] *Evidence Ac* [illegible] that parties cannot, without the leave of the Court, cross-examine a witness whom, the parties having already examined or declined to examine, the Court itself has examined, applies equally whether it is intended to direct the cross-examination to the witness's statements of fact, or to circumstances touching his credibility, for any question meant to impair his credit tends (or is designed) to get rid of the effect of each and every answer, just as much as one that may bring out an inconsistency or contradiction, s. 165 of Act I of 1872. REG. *v.* SAKHARAM MUKUNDJI . . 11 Bom., 166

120. ———— **Recalling witnesses for cross-examination**—*Refusal to recall witness.*—When the charge had been framed and the defendant put on his defence, he had a right, under s. 218 of the Criminal Procedure Code, 1872, to have the prosecutor's witnesses recalled for the purpose of cross-examination. The claim to recall the witnesses for the prosecution was very different from the request made by the accused person to summon a witness under s. 162, Act X of 1872. IN THE MATTER OF THE PETITION OF BELILIOS. BELILIOS *v.* QUEEN
[10 W. R., Cr., 53

121. ———— *Criminal Procedure Code, 1861, s. 232.*—A Magistrate could not refuse to allow witnesses whom he allowed to be cross-examined by the accused previous to the preparation of a charge to be recalled and cross-examined after the accused had been put upon his defence, under s. 232 of the Code of Criminal Procedure, treating them as witnesses for the prosecution. IN THE MATTER OF THAKOOR DYAL SEN
[17 W. R., Cr., 51

IN THE MATTER OF THE PETITION OF NOBIN CHAND BANERJEE . 23 W. R., Cr., 52

122. ———— *Warrant cases—Criminal Procedure Code, 1872, Ch. XVII.*—In the trial of warrant cases the accused may, after the charge is drawn up and the witnesses for the defence have been examined, recall and cross-examine the witnesses for the prosecution. TALLURI VENKATTA *v.* QUEEN . I. L. R., 4 Mad., 130

123. ———— *Right of accused to cross-examine witness—Criminal Procedure Code, 1872, s. 218.*—An accused person has, under s. 218 of Act X of 1872, the right to recall and cross-examine the witnesses for the prosecution at any time while he was engaged on his defence and before his trial was concluded. He is not precluded from asserting and exercising the right, by reason of his having cross-examined them before he was put on his defence, or by reason of his not having, *suo motu*, expressed his wish to do so at the time he was called upon to enter on his defence, and when the witnesses were in attendance in the Court and did not require to be resummoned. QUEEN *v.* LALL SINGH
[9 N. W., 270

124. —— —— *Criminal Procedure Code, 1872, s. 218.*—*Recall of witnesses for prosecution.*—Under s. 218 of the Code of Criminal Procedure, a Magistrate is not competent to refuse to recall the witnesses for the prosecution to be cross-examined by the accused, and it is not necessary for the accused to shew that he has reasonable grounds for his application. QUEEN *v.* AMIRUDDIN FAKEER
[21 W. R., Cr., 20

125. ———— *Cross-examination—Recalling witnesses for further cross-examination after charge—Criminal Procedure Code (Act X of 1882), s. 257.*—There is, under s. 257 of the Criminal Procedure Code, no absolute right of cross-examination which would enable the accused to recall and cross-examine the witnesses for the prosecution, no matter how completely and fully they have already been cross-examined. Where the witnesses for the prosecution were fully cross-examined and a charge framed against the accused, and after an adjournment for ten days the witnesses for the defence were examined and cross-examined, and on the day on which the judgment was to be delivered an application under s. 257 of the Code of Criminal Procedure was made on behalf of the accused, asking that process should issue for the witnesses for the prosecution to be recalled and further cross-examined,—*Held* that if the Magistrate was of opinion that the application was made with the intention and for the purpose of vexation or delay or for defeating the ends of justice he was right in refusing the application. It lies upon the party who thinks he would be able to shew that the ends of justice have been in some way frustrated in consequence of the refusal to recall the witnesses. It is necessary to be very careful that persons on their trial should have proper facilities; it is also necessary on the other hand to see that proceedings in the Criminal Courts are not [illegible] by needlessly carrying [illegible]

WITNESS—CRIMINAL CASES —*continued.*

5. EXAMINATION OF WITNESSES—*continued.*

sight of the main purpose of those proceedings and giving over-attention to matter of mere form. NILKANTA SINGH *v.* QUEEN-EMPRESS

[I. L. R., 20 Calc., 469

126. ———— *Cross-examination—Right of co-accused to cross-examine witness called by another co-accused for defence where their cases are adverse—Evidence Act (I of 1872), s. 137.*—One accused person may cross-examine a witness called by another co-accused for his defence when the case of the second accused is adverse to that of the first. RAM CHAND CHATTERJEE *v.* HANIF SHEIKH . I. L. R., 21 Calc., 401

127. ———— *Cross-examination of prosecution witnesses before charge—Right of accused to have prosecution witnesses recalled after charge drawn up for purposes of cross-examination—Discretion of Magistrate—Criminal Procedure Code (Act V of 1898), ss. 254, 256, and 257—Penal Code (Act XLV of 1860), s. 342.*—After a charge has been drawn up, the accused is entitled to have the witnesses for the prosecution recalled for the purposes of cross-examination. S. 256 of the Code of Criminal Procedure gives the Magistrate no discretion in the matter. After a charge has been drawn up, it is the duty of the Magistrate to require the accused to state whether he wishes to cross-examine, and, if so, which of the witnesses for the prosecution whose evidence has been taken. The fact that there has been already some cross-examination before the charge has been drawn up does not affect this privilege. It is only after the accused has entered upon his defence that the Magistrate is given a discretion to refuse such an application, on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice. ZAMUNIA *v.* RAM TAHAL

[I. L. R., 27 Calc., 370
4 C. W. N., 469

128. ———— *Summoning witnesses for prosecution for further cross-examination—Refusal of such application for inadequate reason—Criminal Procedure Code, 1898, s. 257.*—The mere fact that the witnesses for the prosecution had already been cross-examined is not a sufficient reason for refusing to re-summon them, unless the Magistrate expressly records his opinion that the application for the second cross-examination is within the terms of s. 257 of the Criminal Procedure Code for the purpose of vexation or delay or for defeating the ends of justice. An order refusing to re-summon witnesses without assigning any such reasons is not a proper order. When an application to re-summon witnesses for the prosecution was made, not on the day the accused were called on to make their defence, but on the following day,—*Held* that the delay of one day was in itself no sufficient reason for refusing the application. SREENATH BARAI *v.* EMPRESS . . . 4 C. W. N., 241

129. ———— *Criminal Procedure Code (Act V of 1898), ss. 256, 257—Cross-examination of witness for prosecution, Right of.*—When after the charge was drawn the accused claimed the right to have the medical officer re-summoned for the purpose of cross-examination, and the Magistrate refused to allow process except on payment of fees for his attendance, and the Magistrate in his explanation to the High Court said that the accused had the opportunity to cross-examine the witness immediately after his examination-in-chief was concluded, but that he had declined to do so,—*Held* that under the terms of s. 256, Criminal Procedure Code, the accused was entitled to claim this as a matter of right, and that s. 257, Criminal Procedure Code, did not apply to the present case. ISWAR CHUNDER RAUT *v.* KALI KUMAR DASS . . 4 C. W. N., 351

130. ———— *Cross-examination previous to framing of charge—Criminal Procedure Code, 1872, s. 218.*—An accused person was held to be not deprived of the right given him by s. 218, Act X of 1872, to recall and cross-examine the witnesses for the prosecution after the charge had been drawn up against him by reason of the witnesses having been cross-examined before the charge was framed. A Magistrate should not of his own motion discharge the witnesses for the prosecution until the accused person has exercised or waived the right of cross-examination given him by the section. When it becomes necessary to adjourn the hearing, the Magistrate should in all cases enquire of the accused if he desires to exercise his right of recalling the witnesses for the prosecution, or consents to the discharge of all or any of them. If the accused consents to their discharge, and they are discharged accordingly, he is not entitled to have them re-summoned as a matter of right. Where it became necessary to adjourn the hearing and the Magistrate did not call upon the accused to exercise his right under the section, and there was no sufficient proof that the accused consented to the discharge of the witnesses for the prosecution, it was held that the accused was entitled to have the witnesses, whom he desired to cross-examine at the further hearing re-summoned. *Quære*—If the Magistrate before granting an adjournment called upon the accused to exercise his right of recalling the witnesses for the prosecution, and the accused refused to do so at that time, whether the Magistrate would thereupon be at liberty to discharge the witnesses. QUEEN *v.* LALL MAHOMED . . . . . . 6 N. W., 284

131. ———— *Right of accused to cross-examine witnesses—Examination of accused—Discretion of Magistrate.*—An accused should be allowed at preliminary inquiries before a Magistrate to cross-examine the witnesses; but whether the accused himself shall be examined upon the matter of the charge by the Magistrate is left entirely to the discretion of the Magistrate, and such discretion should not be exercised when the Magistrate thinks that the evidence for the prosecution does not disclose any proper subject of criminal charge against the prisoner. QUEEN *v.* SHAMA SUNKUR BISWAS . . . 10 W. R., Cr., 25

WITNESS—CRIMINAL CASES
—*continued*

5. EXAMINATION OF WITNESSES—*concluded*.

132. ——— *Right of accused to recall witnesses for prosecution—Criminal Procedure Code (Act X of 1872), ss. 217, 218*—Reading ss 217 and 218 of the Criminal Procedure Code together, it appears that, if an accused person desires to recall and cross-examine the witnesses for the prosecution, the time at which he should express such desire is when the charge is read over to him and he is called upon to make his defence; and [illegible]

I. L. R., 7 Calc., 28

S. C. IN THE MATTER OF FAIZ ALI 8 C. L. R., 325

133. ——— *Cross examination of witnesses for the prosecution*—As a rule, the proper and convenient time for the purpose of cross-examination of the witnesses for the prosecution is at the commencement of the accused person's defence; but it is in the discretion of the Criminal Court to allow the accused to recall and cross examine the witnesses for the prosecution at any period of the defence when the Court may think such a step right and proper. KHUBRUCKDHAREE SINGH *v.* PERSHADEE MUNDUL . . 22 W. R., Cr., 44

134. ——— *Refusal to allow accused to recall witnesses for prosecution*—We [illegible] witnesses, which ceased only when they themselves waived it; that Magistrates could waive all inconvenience to witnesses by asking accused persons on the drawing up of charges, whether they required the further attendance of the witnesses; and that the conviction must be set aside because the accused had not enjoyed the protection provided by the law. QUEEN *v.* RAM KISHAN HALWAI

25 W. R., Cr., 48

6. CONSIDERATION AND WEIGHT OF EVIDENCE.

135. ——— Weight of evidence—*Single witness—Evidence of fact*—The evidence of one witness if reliable, is sufficient to prove a fact. ZALEM MISSER *v.* KUNDUN KOOER

11 W. R., 104

BALINDUR NARAIN *v.* KALLA MISSER KOOR

13 W. R., 341

JUGOBUNDO NARAIN DEB *v.* RUMCHUNDER DOSSEE

10 W. R., 236

136. ——— Discrepancies in evidence of witnesses—*Effect of discrepancies.*—Discrepancies in the evidence of witnesses are not the less destructive of their testimony because a greater sagacity on the part of the witnesses would have avoided them. REG. *v.* KALU PATIL 11 Bom., Cr., 146

137. ——— Consideration of evidence—*Assumption of bad character of prisoner*—A Judge cannot properly weigh evidence which starts with an assumption of the general bad character of the prisoners QUEEN *v.* KALU MAL

7 W. R., Cr., 103

138. ——— Value of evidence—*Value of evidence of medical witness*—In trying a prisoner charged with giving false evidence, a Sessions Judge rejected facts which were proved by the evidence of certain witnesses, because a medical officer gave it as his opinion that what the witnesses deposed to could not be true *Held* that it was not the proper way to try a case to rely on mere theories of medical men or skilled witnesses of any sort against facts positively proved. QUEEN *v.* AHMED ALLY

11 W. R., Cr., 25

139. ——— *Evidence disbelieved in some parts and accepted in others.*—Where the evidence at a trial is in part disbelieved, as to which part it is thought that the witnesses had committed perjury, it is unsafe to accept the evidence of those witnesses in other parts and to convict the prisoner thereon JAGRATH SINGH *v.* QUEEN-EMPRESS . I. L. R., 14 Calc., 164

WORKING FOR GAIN.

See CASES UNDER JURISDICTION—CAUSES OF JURISDICTION DWELLING, CARRYING ON BUSINESS, OR WORKING FOR GAIN

WORKMAN.

See ACT XIII OF 1859

2 B. L. R., A. Cr., 33
I. L. R., 7 Mad., 100
I. L. R., 7 Bom., 370
I. L. R., 10 Bom., 96

WRITTEN STATEMENT.

See ADMISSION—ADMISSIONS IN STATEMENTS AND PLEADINGS

B. L. R., Sup. Vol., 904
1 B. L. R., A. C., 133
9 W. R., 89, 130, 290
10 W. R., 287
23 W. R., 220
I. L. R., 14 Bom., 510

See SET-OFF—GENERAL CASES

14 W. R., 473
I. L. R., 15 Mad., 23

——— Denial of title in—

See FALSE EVIDENCE—GENERAL CASES

I. L. R., 6 All., 620

WRITTEN STATEMENT—*continued.*

See LANDLORD AND TENANT—FORFEITURE —DENIAL OF TITLE.

[I. L. R., 13 Calc., 96
I. L. R., 15 Mad., 123

1. ——— Form and contents of written statement—*Civil Procedure Code, 1859, s. 123—Defendant's written statement—Variance between pleading and proof.*—S. 123 of the Civil Procedure Code contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshenchunder Singh* v. *Shamachurn Bhutto, 11 Moore's I. A., 7 ; Mohummud Zahoor Ali Khan* v. *Rutta Koer, 11 Moore's I. A., 468;* and *Narainee Dossee* v. *Nurrohurry Mohuto, Marsh., 70,* that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who, in 1865, was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,—*Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. CHOVA KARA *v.* ISA BIN KHALIFA

[I. L. R., 1 Bom., 209

2. ——— *Argumentative statement.*—A written statement should not be argumentative. BISHEN SAHAYE SINGH *v.* BEER KISHORE SINGH . . . . . 8 W. R., 296

3. ——— *Offer without prejudice—Irrelevant matter—Act VIII of 1859, s. 124.*—An offer without prejudice should be omitted from the pleadings. In a suit where the written statement of the plaintiff contained letters relative to an offer made by the defendants without prejudice, the Court ordered, on the application of the defendant, that the paragraphs of the written statement relating to the offer should be struck out. HALFORD *v.* EAST INDIAN RAILWAY COMPANY

[12 B. L. R., Ap., 19

4. ——— *Irrelevant matter—Application to take written statement off the file.*—Where there was in a written statement matter irrelevant and improper, the Court, on application, ordered it to be taken off the file, with leave to file a fresh one in a week. Written statements should set out the *bonâ fide* nature of the defence, and nothing else. KASUBLAL DEY *v.* TREMEARNE

[3 B. L. R., Ap., 12

5. ——— *Taking off the file for irrelevancy—Relevant matter—Tender of written statement.*—The Court has jurisdiction to take a written statement off the file, for irrelevancy, until it is "tendered," which is when it is produced at the hearing of the suit. "Relevancy" is to be judged by what the defendant believed to be material to his case, and not whether it did in fact disclose a good defence to the action. KESHAVJI NAIK *v.* NASARVANJI ARDESIR WADIA . 10 Bom., 425

6. ——— *Inconsistent pleas —Plea allowed on appeal inconsistent with written statement.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will, and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants who claimed under a gift from the wife had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in. *Held* that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan* v. *Hoseini Bibi, I. L. R., 15 Calc., 684 : L. R., 15 I. A., 81,* distinguished. NARAYANASAMI *v.* RAMASAMI

[I. L. R., 14 Mad., 172

7. ——— Court-fee on written statement—*Code of Civil Procedure (Act VIII of 1859), s. 120—Act X of 1877, s. 110—Court Fees Act (VII of 1870), s. 19.*—A written statement of his case, tendered by a party to a suit at any time before or at first hearing of the suit, is not liable to any Court-fee, and may be written on plain paper (s. 110 of Act X of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp duty (s. 19 of Act VII of 1870). NAGU *v.* YEKNATH . I. L. R., 5 Bom., 400

CHERAG ALI *v.* KADIR MAHOMED

[12 C. L. R., 367

8. ——— Verification of written statement—*Admission on record without verification.*—A written statement filed by the defendant should be verified, but if admitted on the record without verification, its allegation should be noticed and issues framed accordingly. RADHACHURN ROY *v.* MORAN & CO. . . . . . 13 W. R., 342

9. ——— *Verification on behalf of Corporation—Principal officer of Corporation or Company—Civil Procedure Code (1882), ss. 115 and 435—Practice—Waiver of objection to verification—Plaint, Verification of.*—The Civil Procedure Code by ss. 115 and 435 enables a principal officer of a Corporation to verify a plaint or written statement, and it is therefore not necessary that permission for that purpose should be obtained, but it should be shown in cases to which s. 435 applies that the person purporting to verify a plaint or a written statement on behalf of a Corporation or Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to

WRITTEN STATEMENT—*continued*

that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaints in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written statements signed "The East Indian Railway Company by their constituted attorney and agent Richard Gardiner," who was described in the verification as the "Agent of the defendant Company," and the written statements contained no statement to the effect that he was a principal officer of the defendant Company and able to depose to the facts of the case,—*Held* that such evidence should be supplied by affidavit before the written statements could be admitted. The provisions in the Code relating to the verification of written statement, however, being intended for the protection of plaintiffs, their observance [illegible]

BANERJEE *v.* EAST INDIAN RAILWAY CO. [I. L. R., 23 Calc., 268

10. ———— *Application to verify—Notice—Practice.*—Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary. FINLAY, CAMPBELL & CO. *v.* STEELE [1 Ind. Jur., N. S., 39

11. ———— *Application to verify by agent—Notice.*—The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side. OVEREND, GURNEY & CO. *v.* STEELE [1 Ind. Jur., N. S., 40

12. ———— **Filing written statement—** *Time for filing.*—Under the Code of Civil Procedure, a plaintiff cannot file a written statement after having seen that of the defendants, and by way of rejoinder thereto. JADUB RAM DEB *alias* JADUB CHUNDER DEB *v.* RAM LOCHUN MUDUCK . 5 W. R., 56

13. ———— *Filing and verifying written statement on behalf of plaintiff—Civil Procedure Code, 1859, ss. 28, 123.*—The plaintiff in a suit went on a pilgrimage after he had been ordered to file a written statement, but without having filed it. Not having returned when the case was on the board, his son applied, under ss. 28 and 123 of Act VIII of 1859, for leave to verify and file a [illegible]

14. ———— **Admission of written statements**—*Civil Procedure Code, 1859, ss. 120, 122.*—The admission of written statements of the parties on various dates, unless expressly called for by the Court, was held to be contrary to the provisions of ss. 120 and 122 of the Civil Procedure Code, 1859. ALI NUKEE *alias* FUDAD ALI *v.* TORAB ALI *alias* MIRZA NAWAB . . W. R., 1864, 44

15. ———— **Written statement by third party**—*Power of Court.*—A Court has no authority to receive a written statement in a suit from one who is not a party, or to permit such a person to appear at the hearing. BRANOMOYEE *v.* BISSUT CHUNDER MUSTOFEE . . 25 W. R., 17

16. ———— **Defendant neglecting to put in statement**—*Adjournment of case—Costs.*—In the event of a defendant neglecting to furnish a written statement, the Court will examine him as to the grounds of his defence; and should it appear desirable that a written statement should be put in, the case will be adjourned for that purpose at the expense of the defaulting party. HAMILTON *v.* ORIENTAL INLAND STEAM NAVIGATION COMPANY [2 Hyde, 60

17. ———— **Additional written statement**—*Practice—Act VIII of 1859, s. 122.*—An application by the defendant for leave to file an additional written statement allowed on condition of the defendant paying the whole costs and furnishing a copy of the additional statement to the plaintiff free of charge. Distinction made between such an application by a plaintiff and one made by a defendant. DASMANI DABI *v.* SRINATH GHOSE [3 B. L. R., Ap., 11

18. ———— *Supplemental statements, Filing of.*—Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. MERWANJI HEERJIBHOY *v.* NEW DHURUMSEY SPINNING & WEAVING COMPANY . I. L. R., 4 Bom., 576

19. ———— *Civil Procedure Code, 1859, s. 122.*—A Court was held not to have done wrong in admitting a supplemental written statement which it had called for under s. 122, Civil Procedure Code, 1859 which did not add to or vary the plaintiff's claim. JAHANGEER BUKSH *v.* LUCKEE LALL . . 11 W. R., 71

20. ———— *Statement explaining plaint.*—A written statement which was in explanation of the plaint and not starting a new case was allowed to be put in by the plaintiff after evidence was taken, and the defendant not being prejudiced by its admission. [illegible] *v.* [illegible] DOSS . 23 W. R., 377

21. ———— **Amendment of written statement**—*Permission to extend counter claim—Practice.*—The defendants, owing to their ignorance of the true facts, did not [illegible] the counter claim certain sums paid by them to the plaintiffs [illegible]

[illegible]

[illegible] . I. L. R., 24 Bom., 403

WRITTEN STATEMENT—*continued.*

See LANDLORD AND TENANT—FORFEITURE—DENIAL OF TITLE.

[I. L. R., 13 Calc., 96
I. L. R., 15 Mad., 123

1. ———— **Form and contents of written statement**—*Civil Procedure Code, 1859, s. 123—Defendant's written statement—Variance between pleading and proof.*—S. 123 of the Civil Procedure Code contemplated that a defendant should, in his written statement, set forth the case he intends to make at the trial. The rule followed in *Eshenchunder Singh* v. *Shamachurn Bhutto, 11 Moore's I. A., 7 ; Mohummud Zahoor Ali Khan* v. *Rutta Koer, 11 Moore's I. A., 468;* and *Narainee Dossee* v. *Nurrohurry Mohuto, Marsh., 70,* that a plaintiff must be held to the state of facts and equities alleged and pleaded by him in his plaint, or involved in or consistent therewith, applies also to the case made on the pleadings by a defendant. Therefore, where the defendant in a suit in ejectment averred in his written statement that the land in dispute was in fact his, but had previously to 1865 been encroached on by the plaintiff, who, in 1865, was about to erect a building thereon, and that the defendant then, in order to avoid litigation, compromised the dispute by payment to the plaintiff of a sum of money, and purchased the land, and had since then remained in possession of it,—*Held* that the only defence open to the defendant was that of purchase, and that he could not be allowed at the trial to prove a case of continuous user and possession adverse to the plaintiff commencing before 1865. CHOVA KARA *v.* ISA BIN KHALIFA

[I. L. R., 1 Bom., 209

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[12 B. L. R., Ap., 19

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[3 B. L. R., Ap., 12

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6. ———— *Inconsistent pleas—Plea allowed on appeal inconsistent with written statement.*—A Hindu wrote his will devising certain ancestral property to his wife, and on the following day he registered it and took the plaintiff in adoption. The testator died shortly afterwards. It was found that the plaintiff's natural father was aware of the dispositions contained in the will, and that the testator would not have adopted the plaintiff but for the consent of the natural father to those dispositions. The defendants who claimed under a gift from the wife had denied the adoption in their written statement, and on appeal raised the further plea that the adoption, if any, was conditional on the provisions of the will being acquiesced in. *Held* that the defendants were not precluded from succeeding on the latter of these pleas notwithstanding it was inconsistent with their written statement. *Mahomed Buksh Khan* v. *Hoseini Bibi, I. L. R., 15 Calc., 684 : L. R., 15 I. A., 81,* distinguished. NARAYANASAMI *v.* RAMASAMI

[I. L. R., 14 Mad., 172

7. ———— **Court-fee on written statement**—*Code of Civil Procedure (Act VIII of 1859), s. 120—Act X of 1877, s. 110—Court Fees Act (VII of 1870), s. 19.*—A written statement of his case, tendered by a party to a suit at any time before or at first hearing of the suit, is not liable to any Court-fee, and may be written on plain paper (s. 110 of Act X of 1877). A written statement called for by the Court after the first hearing is also exempt from stamp duty (s. 19 of Act VII of 1870). NAGU *v.* YEKNATH . I. L. R., 5 Bom., 400

CHERAG ALI *v.* KADIR MAHOMED

[12 C. L. R., 367

8. ———— **Verification of written statement**—*Admission on record without verification.*—A written statement filed by the defendant should be verified, but if admitted on the record without verification, its allegation should be noticed and issues framed accordingly. RADHACHURN ROY *v.* MORAN & Co. . . . . . 13 W. R., 342

9. ———— *Verification on behalf of Corporation—Principal officer of Corporation or Company—Civil Procedure Code (1882), ss. 115 and 435—Practice—Waiver of objection to verification—Plaint, Verification of.*—The Civil Procedure Code by ss. 115 and 435 enables a principal officer of a Corporation to verify a plaint or written statement, and it is therefore not necessary that permission for that purpose should be obtained, but it should be shown in cases to which s. 435 applies that the person purporting to verify a plaint or a written statement on behalf of a Corporation or Company is a principal officer of the Corporation, and is able to depose to the facts of the case. If the plaint or written statement contains a statement to

WRITTEN STATEMENT—*continued*

that effect, verification in the usual form would probably be sufficient. Where suits had been filed against the East Indian Railway Company, the plaints in which described the defendant Company as a Corporation, and an application was made for the admission on behalf of the defendant Company of written statements signed "The East Indian Railway Company by their constituted attorney and agent Richard Gardiner," who was described in the verification as the "Agent of the defendant Company," and the written statements contained no statement to the effect that he was a principal officer of the defendant Company and able to depose to the facts of the case,—*Held* that such evidence should be supplied by affidavit before the written statements could be admitted. The provisions in the Code relating to the verification of written statement, however, being intended for the protection of plaintiffs, the ... [illegible]

10 ———— *Application to verify—Notice—Practice*—Where an application is made that a written statement be verified by a person other than the plaintiff or defendant, it is always desirable that notice be given to the other side, although not absolutely necessary. FINLAY, CAMPBELL & CO. v. STEELE

[1 Ind. Jur., N. S., 30

11. ———— *Application to verify by agent—Notice*—The Court will allow a written statement to be verified by the constituted attorney of the party without notice to the other side. OVEREND, GURNEY & CO v. STEELE

[1 Ind. Jur., N. S., 40

12. ———— Filing written statement—*Time for filing*—Under the Code of Civil Procedure, a plaintiff cannot file a written statement after having seen that of the defendants, and by way of rejoinder thereto. JADUB RAM DEB alias JADUB CHUNDER DEB v. RAM LOCHUN MUDUCK . 5 W. R., 66

13 ———— *Filing and verifying written statement on behalf of plaintiff—Civil Procedure Code, 1859, ss 28, 123*—The plaintiff in a suit went on a pilgrimage after he had been ordered to file a written statement, but without having filed it. Not having returned when the case was on the board, his son applied, under ss. 28 and 123 of Act VIII of 1859, for leave to verify and file a statement, alleging himself to be interested as a reversioner. The application was refused. *Held* that a third party will not be allowed to verify and file a written statement for a plaintiff who has culpably neglected to file one himself. DYNOMOYE DOSSEE v. TARRACHUNDER COONDOO CHOWDHRY

[Bourke, O. C., 163

14 ———— Admission of written statements—*Civil Procedure Code, 1859, ss. 120, 122*—The admission of written statements of the parties on various dates, unless expressly called for by the Court ... [illegible]

15 ———— Written statement by third party—*Power of Court*—A Court has no authority to receive a written statement in a suit from one who is not a party, or to permit such a person to appear at the hearing. SURNOMOYEE v. BEEREN CHUNDER MUSTOFEE 23 W. R., 17

16 ———— Defendant neglecting to put in statement—*Adjournment of case—Costs*—In the event of a defendant neglecting to furnish a written statement, the Court will examine him as to the grounds of his defence; and should it appear desirable that a written statement should be put in, the case will be adjourned for that purpose at the expense of the defaulting party. LAMBERTON v. ORIENTAL INLAND STEAM NAVIGATION COMPANY

[2 Hyde, 80

17 ———— Additional written statement—*Practice—Act VIII of 1859, s. 122*—An application by the defendant for leave to file an additional written statement allowed on condition of the defendant paying the whole costs and furnishing a copy of the additional statement to the plaintiff free of charge. Distinction made between such an application by a plaintiff and one made by a defendant. DASMANI DASI v. SRINATH GHOSE

[3 B. L. R., Ap., 11

18 ———— —*Supplemental statements, Filing of*—Supplemental written statements cannot be filed after the parties have entered upon their case at the hearing. MUNCHERSHAW BEZONJI v. NEW DHURUMSEY SPINNING & WEAVING COMPANY I. L. R., 4 Bom., 576

19. ———— —*Civil Procedure Code, 1859, s. 122*—A Court was held not to have done wrong in admitting a supplemental written statement which it had called for under s. 122, Civil Procedure Code, 1859, which did not add to or vary the plaintiff's claim. JAHANGEER BUKSH v. PURMESHREE LALL 11 W. R., 71

20 ———— —*Statement explaining plaint*—A written statement which was in explanation of the plaint and not starting a new case was allowed to be put in by the plaintiff after evidence was taken, and the defendant not being prejudiced by its admission. FAZL MAHOMED v. DHURUMDAS PAMHOSS . 22 W. R., 377

21. ———— Amendment of written statement—*Permission to extend counter claim—Practice*—The defendants, owing to their ignorance of the true facts, did not include in their counter claim certain sums paid by them to the plaintiff in part payment of the alleged losses incurred in respect of the purchase and resale of the aforesaid cotton. *Held* that the lower Court (RUSSELL, J.) had rightly permitted the defendants to put in a supplemental written statement extending their counter claim so as to include these items. LAKHMICHAND v. CHOTOORAM . . I. L. R., 24 Bom., 403

WRITTEN STATEMENT—*concluded.*

22. ———— Objections to written statement—*Sunday—"Four clear days"—Civil Procedure Code, 1859, s. 121*—A written statement has been "four clear days" upon the file in compliance with the rule 28, although the last of such days is a Sunday. Objections to the written statement on the ground stated in s. 121 of Act VIII of 1859 cannot be taken when the suit is ripe for hearing. SMALLWOOD *v.* PARRY . . . . . Cor., 39

23. ———— Raising question not raised in written statement—*Omission to raise equitable defence in written statement.*—A defendant is not precluded from availing himself of any equity which might arise out of the facts proved at the trial, merely because he has not raised that equity on the face of his written statement. GOUR CHUNDER BISWAS *v.* GREESH CHUNDER BISWAS [7 W. R., 120

24. ———— *Raising question of jurisdiction—Fresh issue—Practice.*—Where a question of jurisdiction had not been raised in a written statement, the defence therein being limited to a statement of the merits of the case, an application to raise an issue as to jurisdiction was granted on payment of the costs of the adjournment to enable the plaintiff to meet the case set up. ROHEEMOLLA *v.* PALMER . . . . . Cor., 8

WRONG-DOERS.

See CONTRIBUTION, SUIT FOR—JOINT WRONG-DOERS.

See LIMITATION ACT, 1877, ART. 109. [I. L. R., 24 Calc., 413

See RES JUDICATA — PARTIES — SAME PARTIES OR THEIR REPRESENTATIVES. [I. L. R., 14 Bom., 408

WRONGFUL ATTACHMENT.

See ATTACHMENT—LIABILITY FOR WRONGFUL ATTACHMENT. [I. L. R., 17 Calc., 436
L. R., 17 I. A., 17

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS. [3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235

See CASES UNDER DAMAGES—SUITS FOR DAMAGES—TORTS.

See CASES UNDER EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

WRONGFUL CONFINEMENT.

See COMPOUNDING OFFENCE. [I. L. R., 21 Calc., 103

See UNLAWFUL COMPULSION. [I. L. R., 19 Calc., 572

See WRONGFUL RESTRAINT. [I. L. R., 12 Bom., 377

WRONGFUL CONFINEMENT—*continued.*

1. ———— What amounts to imprisonment—*Suit for damages.*—The detaining of a person in a particular place, or the compelling him to go in a particular direction by force of an exterior will overpowering or suppressing in any way his own voluntary action, is an imprisonment on the part of the person exercising that exterior will. PARAN KUSAM NARASAYA PANTULU *v.* STUART . . 2 Mad., 396

2. ———— Nature of confinement—*Penal Code (Act XLV of 1860), s. 346.*—In order to render a person liable under s. 346 of the Penal Code, it must be shown that the wrongful confinement was of such a nature as to indicate an intention that the person confined should not be discovered. IN THE MATTER OF THE PETITION OF SREENATH BANERJEE. EMPRESS *v.* SREENATH BANERJEE [I. L. R., 9 Calc., 221

3. ———— Unlawful commitment by person in authority—*Illegal arrest—Penal Code, s. 220—Presumption of malice.*—Proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. Knowledge that such commitment is contrary to law is a question of fact and not of law, and must be proved in order to satisfy the requirements of s. 220 of the Penal Code. REG. *v.* NARAYAN BABAJI . . 9 Bom., 346

4. ———— Obtaining arrest of wrong person—*Liability of person setting Court in motion.*—Where a wrong person is arrested and imprisoned under a decree to which he is no party, the person setting the Court in motion is not liable for such arrest and imprisonment if he did not obtain the process fraudulently or improperly. BHEEMA CHARLU *v.* DONTI MURTI . . . . 8 Mad., 38

5. ———— Illegal arrest—*Malice.*—Four persons, two of them police constables and two village officers, were convicted of wrongful confinement and abetment thereof. The defendants, the village officers, maliciously directed the arrest of certain persons for resisting the detention of certain pigs found trespassing. *Held* a good conviction. ANONYMOUS . . . 5 Mad., Ap., 24

6. ———— Wrongful restraint—*Penal Code, ss. 339, 340, 342—Malice.*—Malice is not an essential ingredient in the offence of "wrongful confinement" as defined by s. 340 of the Indian Penal Code (Act XLV of 1860). The offence is complete when a person is wrongfully restrained in such a manner as to be prevented from proceeding beyond certain circumscribing limits. And a person is wrongfully restrained when he is voluntarily obstructed so as to be prevented from proceeding in any direction in which he has a right to proceed. The accused as abkari inspector visited a toddy shop where the complainant and one *D* were employed as agents for the sale of toddy. Having reason to suspect that an offence under the Abkari Act (Bombay Act V of 1878) had been committed, the accused made an inquiry, in the course of which the complainant made certain statements implicating his fellow-servant. The accused thereupon resolved to prosecute *D* and make the complainant a witness in the case. In order to prevent him being tutored, the accused ordered his

WRONGFUL CONFINEMENT—*continued.*

[illegible] made by him before the accused. He was then allowed to go away. The accused prosecuted *D*, and in the course of his trial admitted in his deposition that he had ordered his sepoy to bring the complainant to his camp, and had detained him there during the night. After the termination of *D's* trial the complainant charged the accused with wrongful confinement under s. 342 of the Indian Penal Code. The accused pleaded that the complainant had voluntarily come to his tent to have his statements reduced to writing, and that he had of his own accord stopped in his camp during the night. The trying Magistrate held this plea proved, and discharged the accused under s. 253 of the Code of Criminal Procedure (Act X of 1882). The Sessions Judge held that though the accused had detained the complainant in his camp during the night, still he was not guilty of any offence under the Penal Code, as he had acted without malice and to the best of his judgment. *Held* by the High Court on revision that the mere circum- [illegible]

7. ——— Wrongful arrest—*Penal Code (Act XLV of 1860), s. 342—Criminal Procedure Code (1882), s. 54—Offence committed by a British subject in foreign territory—Powers of the police to arrest for such offence without a warrant.*—S. 54 of the Criminal Procedure Code (Act X of 1882) does not empower a police officer to arrest, without a warrant, a British subject in British India on a charge of criminal breach of trust or other cognizable offence committed outside British India. *M* was a [illegible] Thereupon he obtained an order from the District Magistrate of Belgaum dated the 16th November [illegible] officer from Sangli State came to Belgaum with a warrant issued by the Sangli Court for the arrest of *M* on a charge of criminal breach of trust. The chief constable thereupon directed *M's* arrest. *M* brought to the notice of the chief constable the District Magistrate's order of the 16th November 1891, but he was detained in custody till the matter was reported to the first class Magistrate, who ordered his discharge. In the meantime the complaint filed against *M* in the Sangli State was dismissed without requiring his extradition. *M* thereupon prosecuted the chief constable on a charge of wrongful arrest and wrongful confinement. *Held* that the chief constable had no power to arrest the complainant without a warrant

WRONGFUL CONFINEMENT—*concluded.*

and that he was guilty of the offence of wrongful confinement under s. 342 of the Penal Code. In re MUKUND BABU VETHE. I. L. R., 19 Bom., 72

WRONGFUL CONVERSION

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS
[I. L. R., 4 Calc., 110
5 Bom., O. C., 140
I. L. R., 10 All., 133

See ONUS OF PROOF—WRONGFUL CONVERSION . 7 W. R., 280

See PLEDGOR AND PLEDGEE
[I. L. R., 10 Calc., 322
L. R., 10 I. A., 60

WRONGFUL DETENTION.

——— Detention of accused by Police Inspector—*Criminal Procedure Code, 1872, s. 121—Per* GLOVER, *J.*—Where a Sub-Inspector of Police is charged with having detained prisoners for more than twenty-four hours it is not necessary for the Crown to prove that he detained them with a guilty knowledge, as s. 121, Act X of 1872 imperatively lays down that accused persons are on no account to be detained beyond that time except under special order of the Magistrate, which was not obtained in this case. QUEEN *v.* BAROORAM DASS
[10 W. R., Cr., 30

WRONGFUL DISMISSAL.

See CASES UNDER MASTER AND SERVANT

——— Suit for, against Government.

See GOVERNMENT . 7 B. L. R., 683

WRONGFUL DISTRAINT

See BENGAL RENT ACT (VIII OF 1869), s. 27
[3 B. L. R., Ap., 74
6 W. R., Act X, 7, 31
9 W. R., 102
Marsh., 264
15 W. R., 461
3 B. L. R., A. C., 261
7 W. R., 41

See BENGAL RENT ACT (VIII OF 1869), s. 100
[Marsh., 470
3 W. R., Act X, 170

See JURISDICTION OF CIVIL COURT—RENT AND REVENUE SUITS, N. W. P.
[I. L. R., 12 All., 600

See MADRAS RENT RECOVERY ACT, s. 79
[I. L. R., 20 Mad., 413

See PRIVATE DEFENCE, RIGHT OF
[23 W. R., Cr., 40

See RIOTING . 8 Mad., Ap., 11
[I. L. R., 13 Mad., 149

See TRESPASS—GENERAL CASES
[23 W. R., Cr., 40

WRONGFUL DISTRAINT—*continued.*

1.———— Cutting and carrying away crops—*Persons put in possession in execution of decree.*—Certain patnidars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the raiyats allowed them to cultivate, and when they had cultivated cut and carried away their crops. *Held* that the act of the patnidars was an abuse of the law of distraint, and rendered them liable for damages. ADOR MOHUN CHUCKERBUTTY *v.* THAKOOR MONEE DABEE . . . . . . 10 W. R., 70

2.———— Crops, Seizure of—*Act X of 1859, ss. 142 and 143—Trespass.*—Certain sub-lessees sued in the Collector's Court the zamindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. *Held* that ss. 142 and 143 of Act X of 1859 applied to the case. S. 143, Act X of 1859, contemplated not only the case of a person who professes to follow the provisions of the law, though he has no power to distrain, but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons were considered by that section as trespassers, and were liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. RADHA MOHAN NASKAR *v.* JADUNATH DASS

[3 B. L. R., A. C., 261: 12 W. R., 68

3.———— Person acting without authority—*Act X of 1859, s. 143—Trespasser.*—S. 143, Act X of 1859, did not apply when a distrainer acted without the authority of the superior holder. In such a case he was a mere trespasser. ROWSHUN *v.* BHOLANATH DOSS . 5 W. R., Act X, 67

4.———— Suit for damages for illegal distraint—*Tort—Non-joinder of parties—Parties in actions of tort.*—A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained. Objection being taken at a late stage of the case on the ground of non-joinder of a party, that party was in his own application added as a plaintiff. *Held* that the rule that persons having the same cause of action must sue jointly, does not apply to actions on tort in every case in which persons have been damnified by the same tortious act. If the objection of non-joinder of party in an action of tort be not taken at the time and in the way provided by law, the defendant is liable to such portion of the damages only as have been incurred by the plaintiff who originally brought the suit. JAGDEO SINGH *v.* PADARATH AHIR . . . . I. L. R., 25 Calc., 285

5.———— Persons removing property under rent-law—*Procedure—Penal Code, s. 379.*—Persons removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Bengal Act VIII of 1869. IN THE MATTER OF AGHANI. AGHANI *v.* BHAGI HALWAI . 8 C. L. R., 204

WRONGFUL DISTRAINT—*concluded.*

6.———— Right to sue to set aside wrongful distraint—*Right of landlord against trespasser.*—A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. HORRO NARAIN *v.* SHOODHA KRISHTO BERAH

[I. L. R., 4 Calc., 890: 4 C. L. R., 32

7.———— Right to damages for wrongful distraint—*Beng. Act VIII of 1869, ss. 69, 78—Liability to suit for damages.*—When, on the one hand, a raiyat institutes a suit to contest the demand of a distrainer, the Court has no option, but must adjudicate upon the demand. If, on the other hand, the distrainer has distrained "otherwise than according to the provisions of the Rent Act," he has done so at his peril, and rendered himself liable to an action for damages by the owner of the distrained property. TARINEE KANT LAHIREE CHOWDHRY *v.* RAJKISHORE TONTRY . . 24 W. R., 334

8.———— Right to damages—*Act X of 1859, s. 142—Suit to contest distraint—Onus of proof—Damages.*—In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma; if thereupon the tenant pleads payment and payment is denied, the onus is on the tenant to prove his allegation. Before a tenant can obtain any decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained. OOJAN DEWAN *v.* PRANNATH MUNDUL . . 8 W. R., 220

9.———— Onus of proof—*Suit for damages for wrongful distraint—Act X of 1859, s. 143.*—In order to maintain a suit under s. 143, Act X of 1859, it was necessary for the plaintiff to prove that the defendant in making the distress was acting not only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up. RAYE KUMUL DOSSEE *v.* JHOROO MOLLAH . . . 15 W. R., 543

See JOYLOLL SHEIKH *v.* BROJONATH PAUL CHOWDHRY . . . . 9 W. R., 162

10.———— Suit on account of property damaged by wrongful distrainer—*Act X of 1859, s. 142—Damages for vexatious distraint, Power of Court to award.*—When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint. Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. NONKOO RAM *v.* WOOJOGUR ROY . . 5 W. R., Act X, 68

11.———— Procedure—*Beng. Act VIII of 1869, s. 101—Proceedings against persons wrongfully distraining.*—When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s. 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. PREM CHAND LAHA *v.* ADDOITO DOSS . . 20 W. R., 445

WRONGFUL GAIN OR LOSS

See THEFT . I. L. R., 15 Bom., 344
[I. L. R., 18 All., 88
I. L. R., 22 Calc., 669, 1017
I. L. R., 25 Calc., 416

WRONGFUL LOSS

See MISCHIEF . 3 B. L. R., A. Cr., 17
[I. L. R., 3 Calc., 573
I. L. R., 12 Calc., 55, 660
I. L. R., 7 Bom., 126

WRONGFUL POSSESSION.

———— Trespasser—*Sums paid during wrongful possession, Right to recover.*—Where a person has wrongfully taken possession of an estate and held it adversely to the true owner, and has, during his possession, paid certain sums for Government revenue on the supposition that he was the lawful owner (being, however, in reality, nothing more than a trespasser and wrong doer), he is not entitled to recover, as against the true owner, any sums so paid, even though such payments may have enured to the benefit of the true owner, but must be content to bear the burden of his own wrong. TILUCK CHAND *v.* SOUDAMINI DASI
[I. L. R., 4 Calc., 566: 3 C. L. R., 456

WRONGFUL RESTRAINT

See COMPOUNDING OFFENCE
[I. L. R., 21 Calc., 103

See MISCHIEF . I. L. R., 12 Calc., 55

See WRONGFUL CONFINEMENT
[I. L. R., 13 Bom., 376

1. ————Penal Code, ss. 339, 340, 342—*Police officer, Conduct of.*—In a case of a police officer charged under Penal Code, s. 342, where there was no malice, no intention of doing an act of the nature spoken of in s. 339 or 340, and no voluntary obstruction or restraint, though there was probably excessive and mistaken exercise of powers not civilly excusable in a police officer, the facts were held not to amount to the criminal offence of wrongful restraint. IN THE MATTER OF THE PETITION OF BUDHOOL HOSSEIN . . . 24 W. R., Cr., 51

2. ———— s. 339—*Refusal to let person go until he gave bail.*—Where a police officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code. SHEO SHURN SAHAI *v.* MAHOMED FAZIL KHAN
[10 W. R., Cr., 20

3. ———— *Police keeping witness in custody under surveillance.*—Where the police kept a witness under surveillance for four days, the High Court held, under the circumstances, that there was nothing in law to warrant them in keeping him so in restraint. BAIJNATH LALL *v.* EMPRESS . . . . . 4 C. W. N., 49

WRONGFUL RESTRAINT—*continued.*

4. ———— *Restraint and taking money on false plea.*—Where the accused prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea,—*Held* the accused were guilty of wrongful restraint, and not theft. JOWAHIR SHAH *v.* GIRIDHAREE CHOWDHRY
[10 W. R., Cr., 35

5. ————Penal Code, ss. 79 and 341—*Mistake of fact—Act done in good faith under belief it is justified by law.*—A Court peon accompanied by two of the decree-holder's men (petitioners) went to execute a warrant of arrest against the judgment-debtor *M*. A palki with closed doors was noticed to be coming out of the male apartment of *M*'s house. The petitioners, believing that *M* was effecting his escape in that palki, stopped it and examined it, although the persons accompanying the palki protested and said there was a lady in it. Admittedly, there was in the palki a pardanashin lady of rank. *Held* that, having regard to the terms of s. 79 of the Penal Code, a conviction of the petitioners under s. 341 was not right. KANAI LAL GOWALA *v.* QUEEN-EMPRESS . I. L. R., 24 Calc., 885

KANHAI GOALA *v.* QUEEN-EMPRESS
[1 C. W. N., 685

6. ———— Penal Code, ss. 52, 79, 99, and 342—*Act done by a person by mistake of fact in good faith believing himself justified by law—Right of private defence against acts of a public servant acting bonâ fide under colour of his office—Act XII of 1856, s. 35—Reasonable suspicion—Obstruction to a police officer while acting in execution of duty—Arrest—Criminal Procedure Code (Act X of 1882), s. 61.*—On the 27th December 18[illegible], the accused, a police constable, was on duty at a temporary post near the Arthur Crawford Market. His turn of duty lasted from 4 to 7 A.M. Between 6-30 and 7 A.M. he saw the complainant carrying under his arm three pieces of cloth. Suspecting that the cloth was stolen property, he went up to the complainant and questioned him. In [illegible]

one of the pieces of cloth in order to examine it more closely. The complainant objected to this, and there was a scuffle between them for the possession of the cloth. The accused then arrested the complainant, and took him to a European Inspector, to whom he stated the facts alleging that he had arrested the complainant because he had assaulted him. The Inspector, seeing that the complainant was an old man, and on the accused saying he was not hurt, let the complainant go. The complainant then lodged a complaint before the Acting Chief Presidency Magistrate charging the accused with wrongful restraint and wrongful confinement, offences punishable under ss. 341 and 342 respectively, of the Indian Penal Code (XLV of 1860). The defence was that the complainant had assaulted the accused,

WRONGFUL DISTRAINT—*continued.*

1.———— **Cutting and carrying away crops**—*Persons put in possession in execution of decree.*—Certain patnidars who, in execution of a decree for khas possession, had been put in nominal possession of their lands, instead of ousting the raiyats allowed them to cultivate, and when they had cultivated cut and carried away their crops. *Held* that the act of the patnidars was an abuse of the law of distraint, and rendered them liable for damages. ADOR MOHUN CHUCKERBUTTY *v.* THAKOOR MONEE DABEE . . . . . . 10 W. R., 70

2.———— **Crops, Seizure of**—*Act X of 1859, ss. 142 and 143—Trespass.*—Certain sub-lessees sued in the Collector's Court the zamindar and others employed by him for the value of crops seized and carried away, under a certificate, as was alleged by the defendants, granted to them by the Collector, but which they failed to produce. *Held* that ss. 142 and 143 of Act X of 1859 applied to the case. S. 143, Act X of 1859, contemplated not only the case of a person who professes to follow the provisions of the law, though he has no power to distrain, but also the case of a person who, under colour of the Act, does distrain, but does not do so according to the provisions of the Act. Such persons were considered by that section as trespassers, and were liable to the penalty of trespass, in addition to damages which may be awarded against them by the Revenue Court. RADHA MOHAN NASKAR *v.* JADUNATH DASS

[3 B. L. R., A. C., 261 : 12 W. R., 68

3.———— **Person acting without authority**—*Act X of 1859, s. 143—Trespasser.*—S. 143, Act X of 1859, did not apply when a distrainer acted without the authority of the superior holder. In such a case he was a mere trespasser. ROWSHUN *v.* BHOLANATH DOSS . 5 W. R., Act X, 67

4.———— **Suit for damages for illegal distraint**—*Tort—Non-joinder of parties—Parties in actions of tort.*—A suit for compensation for illegal distraint of crops was brought by one of two persons jointly entitled to the crops distrained. Objection being taken at a late stage of the case on the ground of non-joinder of a party, that party was in his own application added as a plaintiff. *Held* that the rule that persons having the same cause of action must sue jointly, does not apply to actions on tort in every case in which persons have been damnified by the same tortious act. If the objection of non-joinder of party in an action of tort be not taken at the time and in the way provided by law, the defendant is liable to such portion of the damages only as have been incurred by the plaintiff who originally brought the suit. JAGDEO SINGH *v.* PADARATH AHIR . . . . I. L. R., 25 Calc., 285

5.———— **Persons removing property under rent-law**—*Procedure—Penal Code, s. 379.*—Persons removing property under the provisions of the rent law relating to distraint ought not to be proceeded against under the criminal law, but the parties aggrieved by a wrongful distraint should have recourse to the remedy provided by Bengal Act VIII of 1869. IN THE MATTER OF AGHANI. AGHANI *v.* BHAGI HALWAI . 8 C. L. R., 204

WRONGFUL DISTRAINT—*concluded.*

6.———— **Right to sue to set aside wrongful distraint**—*Right of landlord against trespasser.*—A landlord whose tenant's crops have been wrongfully distrained by a stranger, has a right to sue to set aside such wrongful distraint. HORRO NARAIN *v.* SHOODHA KRISHTO BERAH

[I. L. R., 4 Calc., 890 : 4 C. L. R., 32

7.———— **Right to damages for wrongful distraint**—*Beng. Act VIII of 1869, ss. 69, 78—Liability to suit for damages.*—When, on the one hand, a raiyat institutes a suit to contest the demand of a distrainer, the Court has no option, but must adjudicate upon the demand. If, on the other hand, the distrainer has distrained "otherwise than according to the provisions of the Rent Act," he has done so at his peril, and rendered himself liable to an action for damages by the owner of the distrained property. TARINEE KANT LAHIREE CHOWDHRY *v.* RAJKISHORE TONTRY . . 24 W. R., 334

8.———— **Right to damages**—*Act X of 1859, s. 142—Suit to contest distraint—Onus of proof—Damages.*—In a suit to contest the demand of a distrainer, the landlord is only required to prove the fact of tenancy and the amount of jumma; if thereupon the tenant pleads payment and payment is denied, the onus is on the tenant to prove his allegation. Before a tenant can obtain any decree for damages on the ground of illegal distraint, he must prove what loss he has actually sustained. OOJAN DEWAN *v.* PRANNATH MUNDUL . . 8 W. R., 220

9.———— **Onus of proof**—*Suit for damages for wrongful distraint—Act X of 1859, s. 143.*—In order to maintain a suit under s. 143, Act X of 1859, it was necessary for the plaintiff to prove that the defendant in making the distress was acting not only without right, but without anything to justify him in supposing that he had a right to distrain—a mere trespasser without any reasonable foundation for the claim set up. RAYE KUMUL DOSSEE *v.* JHOROO MOLLAH . . . 15 W. R., 543

See JOYLOLL SHEIKH *v.* BROJONATH PAUL CHOWDHRY . . . . 9 W. R., 162

10.———— **Suit on account of property damaged by wrongful distrainer**—*Act X of 1859, s. 142—Damages for vexatious distraint, Power of Court to award.*—When a suit had been brought under s. 142, Act X of 1859, on account of property damaged or destroyed by neglect of a distrainer, the Court was not competent to award damages for vexatious distraint. Such damages were properly awarded by the Collector under s. 138, in a suit to contest the distrainer's demand. NONKOO RAM *v.* WOOJOGUR ROY . 5 W. R., Act X, 68

11.———— **Procedure**—*Beng. Act VIII of 1869, s. 101—Proceedings against persons wrongfully distraining.*—When proceedings are taken before a Munsif under Bengal Act VIII of 1869, s. 101, he is bound, first, to inquire whether an offence has been committed, and if he is satisfied that it has, the only order he can make against the offenders (not being tenants) is that they shall pay the value of the crops distrained. PREM CHAND LAHA *v.* ADDOITO DOSS . . 20 W. R., 445

WRONGFUL GAIN OR LOSS

See THEFT . I. L. R., 15 Bom., 344
[I L R., 18 All, 88
I. L. R, 22 Calc, 669, 1017
I. L R., 25 Calc, 416

WRONGFUL LOSS

See MISCHIEF . 3 B L. R, A Cr, 17
[I L R, 3 Calc, 573
I. L. R, 12 Calc, 55, 660
I. L R, 7 Bom, 126

WRONGFUL POSSESSION.

—— Trespasser—*Sums paid during wrongful possession, Right to recover* —Where a person has wrongfully taken possession of an estate and held it adversely to the true owner, and has,

paid, even though such payments may have enured to the benefit of the true owner, but must be content to bear the burden of his own wrong TILUCK CHAND *v* SOUDAMINI DASI
[I. L. R, 4 Calc, 566 3 C L R, 456

WRONGFUL RESTRAINT.

See COMPOUNDING OFFENCE
[I L R, 21 Calc, 103

See MISCHIEF I L R, 12 Calc, 55

See WRONGFUL CONFINEMENT
[I L. R, 13 Bom, 376

1 ——Penal Code, ss. 339, 340, 342 —*Police officer, Conduct of.*—In a case of a police officer charged under Penal Code, s 342 where there was no malice, no intention of doing an act of the nature spoken of in s 339 or 340, and no voluntary obstruction or restraint, though there was

2 —— s 339—*Refusal to let person go until he gave bail* —Where a police officer refused to let a person go home until he had given bail, he was held to have been guilty of wrongful restraint under s. 339 of the Penal Code SHEO SHURN SAHAI *v.* MAHOMED FAZIL KHAN
[10 W. R., Cr, 20

3 —— *Police keeping witness in custody under surveillance* —Where the police kept a witness under surveillance for four days, the High Court held, under the circumstances, that there was nothing in law to warrant them in keeping him so in restraint BAJRANGI LALL *v* EMPRESS . . . 4 C W. N, 49

WRONGFUL RESTRAINT—*continued*

4 —— *Restraint and taking money on false plea* —Where the accused prevented the complainants from proceeding in a certain direction with their carts and exacted from them a sum of money on a false plea —*Held* the accused were guilty of wrongful restraint and not theft JOWAHIR SHAH *v* GRIDHAREE CHOWDHRY
[10 W. R, Cr, 35

5 ——Penal Code, ss. 79 and 341—

...alki pro- ...mittedly, ... of rank. ... of s 79 ...etitioners ... GOWALA ... I L R, .. Calc, 835

KANHAI GOALA *v.* QUEEN-EMPRESS
[1 C W. N, 665

6 —— Penal Code, ss 52, 79, 99, and 342—*Act done by a person by mistake of fact in good faith believing himself justified by law—Right of private defence against acts of a public servant acting bonâ fide under colour of his office—Act XII of 1856, s 35—Reasonable suspicion—Obstruction to a police officer while acting in execution of duty—Arrest—Criminal Procedure Code (Act X of 1882), s 54* —On the 29th December 1887, the accused, a police constable, was on duty at a temporary post near the Arthur Crawford Market His turn of duty lasted from 4 to 7 A M Between 6 30 and 7 A M he saw the complainant carrying under his arm three pieces of cloth Suspecting that the cloth was stolen property, he went up to the complainant and questioned him In answer to one of the questions the complainant stated that the cloth was made in England The accused, noticing that each piece bore Gujarathi marks and

complainant because he had assaulted him. The Inspector, seeing that the complainant was an old

was that the complainant had assaulted the accused,

WRONGFUL RESTRAINT—*concluded.*

and had been on that account arrested and kept in confinement until released by the Inspector of Police. The Magistrate found that there was no justification for the suspicion which the accused professed to entertain; that there were no reasonable grounds for questioning the complainant about the cloth in his possession, and that the scuffle was caused solely by the action of the accused in treating the complainant without any valid reason as a suspected thief. The Magistrate convicted the accused of wrongful confinement under s. 342 of the Indian Penal Code (Act XLV of 1860), and sentenced him to four months' rigorous imprisonment. *Held* by the High Court that the conviction was wrong. The accused, having, under the circumstances of the case, an honest suspicion that the cloth in the possession of the complainant was stolen property, was justified in putting questions to the complainant, the answers to which might clear away his suspicions, and having received answers which were not, in his opinion, satisfactory, he acted under a *boná fide* belief that he was legally justified in detaining what he suspected to be stolen property. The putting of questions to the complainant, not for the purpose of causing annoyance or from idle curiosity, but in order to clear up his suspicions, was an indication of good faith, as defined in s. 52 of the Indian Penal Code (Act XLV of 1860). He was therefore protected by s. 79 of the Code. Even though the act of the accused in detaining the cloth might not have been strictly justifiable by law,—that is, even though there might not have been a complete basis of fact to justify a reasonable suspicion that the cloth was stolen property,—still the complainant had no right of private defence under s. 99 of the Code, as the accused was a public servant acting in good faith under colour of his office, and his act was not one which caused the apprehension of death or of grievous hurt. The complainant was not justified in refusing to allow the accused to inspect the cloth, in snatching it from his hands, and in scuffling with him. He was therefore legally arrested, under s. 54, cl. 5, of the Criminal Procedure Code (Act X of 1882), for obstructing a police-officer while acting in the execution of his duty. BHAWOO JIVAJI *v.* MULJI DAYAL I. L. R., 12 Bom., 377

WRONGFUL SEIZURE IN EXECUTION.

See CIVIL PROCEDURE CODE, 1882, s. 244 (ACT XXIII OF 1861, s. 11)—QUESTIONS IN EXECUTION OF DECREE.
[3 N. W., 187
2 Agra, 105
5 Mad., 185
12 B. L. R., 201, 203 note, 207 note, 208 note
12 W. R., 85
3 B. L. R., A. C., 413
I. L. R., 22 Calc., 483

See DAMAGES—MEASURE AND ASSESSMENT OF DAMAGES—TORTS . Marsh., 495
[3 Agra, 202
3 B. L. R., A. C., 413
I. L. R., 3 Bom., 74
7 Mad., 235

WRONGFUL SEIZURE IN EXECUTION—*concluded.*

See CASES UNDER EXECUTION OF DECREE—LIABILITY FOR WRONGFUL EXECUTION.

See MALICIOUS PROSECUTION.
[I. L. R., 19 Bom., 485

See CASES UNDER SALE IN EXECUTION OF DECREE—WRONGFUL SALES.

Y

YEAR.

———— Agricultural—

See N.-W. P. RENT ACT (XVIII OF 1873), s. 94 . I. L. R., 1 All., 512

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ZAMINDAR.

See GRANT—CONSTRUCTION OF GRANTS.
[I. L. R., 9 Mad., 307
L. R., 13 I. A., 32

See GRANT—POWER TO GRANT.
[B. L. R., Sup. Vol., 75, 774

———— Kabuliat between Government and—

See SPECIFIC PERFORMANCE — SPECIAL CASES . I. L. R., 3 Calc., 464

———— Liability of, for repairs of tank.

See CONTRACT ACT, s. 70.
[I. L. R., 18 Mad., 88

———— Proof of title of—

See OWNERSHIP, PRESUMPTION OF.
[I. L. R., 15 Mad., 101
L. R., 18 I. A., 149

———— Purchase by, of patni interest, Effect of—

See MERGER . . 3 C. L. R., 159
[I. L. R., 19 Calc., 760

ZAMINDAR, DUTY OF—

———— Ancient tanks—*Negligence—Statutory powers—Liability for damage occasioned by overflow of tanks.*—The public duty of maintaining ancient tanks, and of constructing new ones, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, devolved upon zamindars. Such zamindars have no power to do away with these tanks, in the maintenance of which large numbers of people are interested, but are charged under Indian law, by reason of their tenure, with the duty of preserving and repairing them. The rights and liabilities

ZAMINDAR, DUTY OF—*concluded.*

of such zamindars with regard to these tanks are analogous to those of persons or corporations on whom statutory powers have been conferred and statutory duties imposed. A zamindar, if the banks of any such tank in his possession are washed away by an extraordinary flood without negligence on his part, is not liable for damage occasioned thereby. MADRAS RAILWAY COMPANY *v.* ZAMINDAR OF CARVETINAGARAM . 14 B. L. R., 209 : 22 W. R., 279 [L. R., 1 I. A., 364

S. C. in lower Courts MADRAS RAILWAY COMPANY *v* ZEMINDAR OF KAVETINUGGUR [5 Mad., 139

and after remand . . . . . 6 Mad., 180

ZAMINDAR, POWER OF—

1. ———— Power to grant lease—*Lease*

Government was not absolutely void for the excess,

2 ———— *Hindu law—Authority to grant lease as manager and owner*—

wise than *bonâ fide.* RAMANADAN *v* SRINIVASA MURTHI . . . . I. L. R., 2 Mad., 80

3. ———— Power to alter boundaries—*Effect of arrangement altering boundary without sanction of Government.*—Zamindars have no autho-

[W. R., 1864, 355

4. ———— Power to charge estate with personal debts.—A decree for possession of certain land with wasilat obtained by a zamindar of an estate, as such, cannot be pledged by him as security for a personal debt, nor for such a debt can the estate be made liable, nor his successor be held responsible NIMAYE CHURN SEIN *v.* RAMMONEE BEEBEE [10 W. R., 152

ZAMINDAR, RIGHTS OF—

See MADRAS REGULATION XXV OF 1802. [14 B. L. R., 115 L. R., 1 A., 268, 282

See WASTE LANDS I. L. R., 19 All., 172

1. ———— Nature of zamindari estate—*Power to deal with estate.*—A zamindar's estate is

ZAMINDAR, RIGHTS OF—*continued.*

[2 Mad., 128

2 ———— Collections of rent—*Claim to intermediate tenures—Onus of proof*—A zamindar has as such a *primâ facie* right to the gross collections from all the mouzahs within his zamindari It is for parties setting up an intermediate tenure to prove their grant PRAHLAD SEN *v* DURGAPRASAD TEWARI [2 B. L. R., P. C., 111 : 12 W. R., P. C., 6 12 Moore's I. A., 286

3. ———— Right to rent—*Payment of revenue by zamindar.*—The right of a zamindar to exact from a tenant payment of rent for a certain piece of land in no way depends on whether he does or does not pay revenue for that land JOTENDRO MOHUN TAGORE *v.* AYMUN BEEBEE [1 C. L. R., 366

4. ————Liability for rent—*Co-sharer in talukh.*—*Held* that a zamindar, by becoming a co-sharer in the talukh, does not lose his right to the joint responsibility of all the other co-sharers for the due payment of the rent, he only becomes bound to make an allowance for that portion which he as a co-sharer ought to pay. GOBINDO COOMAR CHOWDHRY *v.* MANSON [15 B. L. R., 56 : 23 W. R., 152

5. ———— Compensation—*Compensation to patnidar for loss sustained by erection of works by railway company*—A zamindar who receives his rents in full is not entitled to participate in compensation received by his patnidar for loss suffered by the latter in consequence of works being erected on land included in the patni MAHARAJAH OF BURDWAN *v.* WOOMA SOONDUREE DOSSEE [10 W. R., 12

6. ———— Sale in execution of decree—*Custom—Charge on sale proceeds*—Where a sale took place in execution of a decree, and it was proved by custom that the zamindar's right extended to one fourth of the sale-proceeds in cases of involuntary sale,—*Held* that the zamindar had a right to recover the fourth share of the proceeds of sale from the judgment-creditor, who in truth reserved the sale price The zamindar's right attached to the sale proceeds, and was a prior charge upon the proceeds. BYJ NATH PERSHAD *v* MAHOMED FUZL HOSSEIN [2 Agra, Part II, 204

7. ———— *Custom—Right to share of sale-proceeds—Calculation of amount—Zamindari huq.*—Where by custom the zamindar is entitled to a quarter share of the sale proceeds as his huq zamindari, he is entitled to recover it on the occasion of sales, either absolute or originally conditional, but subsequently becoming absolute by foreclosure, from the vendor and the purchaser, and the latter cannot be discharged from his liability by proving that he has paid all, including zamindar's

ZAMINDAR, RIGHTS OF—*concluded.*

dues, to the former, it being incumbent on him to see that the zamindar is satisfied in respect of his dues. *Held* further that, under the circumstances, the plaintiffs, the zamindars, were entitled to one-fourth from R450, the principal amount repayable, and not from the amount ascertained at the time of foreclosure to be due to the mortgagee, including interest, inasmuch as the deed made no provision for payment of any sum as interest. HEERA RAM *v.* DEO NARAIN SINGH . Agra, F. B., 63 : Ed. 1874, 48

8. ———— *Sale in execution of house in mohalla—Wajib-ul-urz—Liability of auction-purchaser—Right of zamindar to huq-i-chaharam.*—The zamindars of a certain mohalla claimed from the purchaser of a house situated in such mohalla, which had been sold in execution of a decree, one-fourth of the sale-proceeds of such house, such purchaser being the holder of such decree. Such suit was based upon the terms of the wajib-ul-urz. That document stated, *inter alia*, that, when a house in such mohalla was sold, a cess called chaharam was received by such zamindars "according to the understanding arrived at between the seller and the zamindars." *Held* that such zamindars were not entitled under the terms of the wajib-ul-urz to one-fourth of the sale-proceeds; that the decree-holder, because he happened to have become the auction-purchaser, could not be regarded as the "seller," and it was only the "seller" who was liable; that the terms of the wajib-ul-urz were applicable only to private and voluntary sales, and not to execution-sales; and that, under these circumstances, the suit must be dismissed. BENI MADHO *v.* ZAHURUL HAQ [I. L. R., 3 All., 797

9. ———— Sale of zamindar's right—*Right as tenant in another house.*—Where a zamindar's right is sold by auction, it does not follow that, by the sale of the zamindari right, he forfeits his tenant-right which he had in another patti in respect of a house. RAM BUKSH SINGH *v.* PURDUMUN KISHORE . . . . 2 Agra, Part II, 202

ZAMINDAR AND RAIYAT.

See CASES UNDER BENGAL RENT ACT, 1869.

See CASES UNDER LANDLORD AND TENANT.

See CASES UNDER MADRAS RENT RECOVERY ACT, 1865.

See CASES UNDER RIGHT OF OCCUPANCY.

ZAMINDARI DAKS.

1. ———— Beng. Act VIII of 1862—*Effect of Act on liability of patnidars.*—Bengal Act VIII of 1862 did not relieve patnidars from their liability under the old laws of paying the zamindari dâk charges. BISSONATH SIRCAR *v.* SHURNOMOYEE [4 W. R., 6

2. ———— *Liability of patnidar.*—Where the terms of a patni lease did not make the patnidar liable for the maintenance of

ZAMINDARI DAKS—*concluded.*

the zamindari dâks, it was held that the patnidar was not liable for a tax which was imposed on the zamindar by Bengal Act VIII of 1862. RAKHAL DOSS MOOKERJEE *v.* SHURNO MOYEE [6 W. R., 100

3. ———— *Liability of patnidar.*—The provision in a pottah that if any item is laid upon the zamindar over and above the sudder jumma, the patnidar shall bear a rateable proportion of it, held not to include the charges connected with the zamindari dâk. ROHINEE KANT ROY *v.* TRIPOORA SOONDUREE DASSIA . 8 W. R., 45

SARODA SOONDURY DEBIA *v.* WOOMA CHURN SIRCAR . . . 3 W. R., S. C. C. Ref., 17

ZAMINDARI DUES AND CESSES.

—— Suit for—

See SMALL CAUSE COURT, MOFUSSIL—JURISDICTION—CESS. [I. L. R., 1 All., 444

ZAMORIN OF CALICUT.

See HINDU LAW—WILL—POWER OF DISPOSITION—GENERALLY. [I. L. R., 21 Mad., 105

See PENSIONS ACT, s. 12. [I. L. R., 21 Mad., 105

ZANZIBAR.

See CONSULAR COURT AT ZANZIBAR. [I. L. R., 3 Bom., 58

———— Consular Court at—

See HIGH COURT, JURISDICTION OF—BOMBAY—CIVIL. [I. L. R., 20 Bom., 480

See HIGH COURT, JURISDICTION OF—BOMBAY—CRIMINAL. [I. L. R., 3 Bom., 334

See JURISDICTION OF CRIMINAL COURT—GENERAL JURISDICTION. [I. L. R., 19 Bom., 741

ZUR-I-PESHGI LEASE.

See ATTACHMENT—ALIENATION DURING ATTACHMENT . I. L. R., 18 All., 123

See DECREE—FORM OF DECREE—POSSESSION . I. L. R., 18 All., 440

See LEASE—ZUR-I-PESHGI LEASE.

See MORTGAGE—POSSESSION UNDER MORTGAGE.

See RIGHT OF OCCUPANCY—*ACQUISITION OF RIGHT—MODE OF ACQUISITION.* [I. L. R., 24 Calc., 272
L. R., 23 I. A., 158
1 C. W. N., 23